

76
R E M A R K S

ON THE LATE

Bishop of ROCHESTER's

S P E E C H

AT THE

BAR of the HOUSE of LORDS.

BEING

A Collection of all the *Papers* publish'd in the
LONDON JOURNAL upon that Occasion,

By BRITANNICUS.



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REMARKS

ON THE LATE

Bill of Rights

OF THE

AT THE

BAR OF THE HOUSE OF COMMONS

BEING

A Collection of all the Papers published in the

London Journal upon the Occasion

OF THE



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1789



B R I T A N N I C U S ' S
R E M A R K S
O N T H E
S P E E C H
O F T H E
L a t e B i s h o p o f R O C H E S T E R .

P A P E R I .

TH E R E is nothing more Unhandsome, or Unmanly, than to aggravate the Misfortunes of an *Unhappy Man*; Nothing more *Inexcusable*, than for Any who are in *Prosperity*, to add to the Load of the *Afflicted*; or to take a Pleasure in pursuing *Those*, who are in a *State of Suffering*. This is a good general Rule: and Every well-disposed Mind will in all ordinary Cases conform to it. But, whenever the Contest lies between the *Profession*, or the *Personal Character or Conduct* of Any Man, on *One Side*; and the Safety or Honour of the *Publick*, on the *Other*: Whenever the Reputation of a Man's *Abilities, Learning, Manner of Speaking, or Art* in colouring over a Bad and Desperate Cause, are opposed, and cried up by Many in Opposition to the *Justice of a Nation*; and by Many, in direct Design of carrying forward the *Ruin* of it: Whenever this is so, It then becomes as true and as certain that *Right and Duty* require such an *Opposition* to Attempts of this Nature, as at the same time preserves itself within the *Rules of strict Justice* to the *Person* concern'd, whilst it

shews its first and principal Care to be the *Good of the Whole Society*.

This is the *Case* between the late *Bishop of Rochester*, on one Side, and his *Country*, on the other; between the *Reputation* of the *Person* condemn'd, and the *Reputation* of his *Judges* who condemn'd Him; between the *Attempts* of Some still to make use of *his Name*, and *his Fate*, to the Disturbance of the *Government*; and the *Interest* of that *Government*, upon the *Quiet and Security* of which all our Hopes of worldly Happiness do and must depend. For the *Scene* of this Affair is not yet suffer'd to come to an end. But tho' it be very remarkable, that *before this*, (whether thro' some Unhappiness or other in his own Conduct, in the several Stations He had pass'd thro', or thro' the Stupidity and Insensibility of Others to his *Merit*, I do not determine,) He seem'd not to have conciliated the inward Affections (I had almost said) of *Any One Man* of *Any Party* to *Himself*: Yet, as soon as *One certain Cause* appear'd to be struck at thro' *Him*, Numbers immediately are become his *Advocates*; and a great *Personal Opinion* of Him, is now to be created and heighten'd; lest the contrary should a little sink *that Cause* in which He suffer'd, or help to beget any Favour towards *Those* who join'd in condemning Him. Sometimes, We are told of the

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Sacredness of his *Profession*; as if *That*, which is the blackest Aggravation of *Civil Guilt*, can possibly be a *Protection* against *Civil Punishment*. Sometimes, his *Learning* and great *Talents* are set forth as sufficient, if rightly divided and spread abroad, to enrich the *Whole Unhappy Lump* of *Common Mortals*, He has left behind Him; tho' before this, his *Learned Abilities* were thought rather *Pretty* and *Entertaining*, than *Deep* and *Substantial*. Sometimes, the *Whole Frame* of the *Government* is threaten'd with *Shocks*, and almost with a *Total Dissolution*, for the crying *Presumption* of defending itself. Sometimes, the *Whole Parliament*, the *Representatives* of the *People*, and the *Guardians* of *Publick Liberty*, are expos'd to the *Multitude* without *Doors*, as *Abject Mercenary* and *Dependent Machines*, moved entirely by the *Will* and *Pleasure* of a *Mighty Hand*, or *Two*, behind the *Curtain*; which only pointed out a *Prelate* to *Destruction*, and the *Herd* obey'd, and destroy'd Him. Sometimes, the *Fire of Rage* is particularly kindled and stir'd up against *Those* of his own *Order*, who gave their *Voices* for such a *Sentence* against a *Brother*; as if Any thing could be a greater *Glory* to *Them*, than to be zealous in a particular *Manner* to return that *Security* to the *State*, which the *State* alone can give and continue to *Them*; or Any thing more for the *Honour* of the *Church*, than to pay back, in the *Duty* and *Gratitude* of *Faithful Service*, the *Obligations* of *Quiet* and *Endowments*, owing to the *Benevolence* of the *Civil Society*, and the *Protection* of the *Civil Power*: or, as if the very *Reproach* itself were not a sufficient *Reparation* for its own *Injury*, whilst it represents *Them* as *Men* so harden'd and abandon'd, as to prefer *Justice* against a *State Criminal* (where *They* think it is due) before the *Affectation* of their own *Superiority* over the rest of *Mankind*, or *Independency* on the *State* in *Criminal Matters*; or any *Imaginary Privilege* of not being touch'd, till *They* had been first levell'd with the *Lay-World* by a *Judgment* purely *Ecclesiastical*. Sometimes, the *Heart-Strings* are play'd upon, and the *Tone* of *Pity* and *Commiseration* towards the *Criminal* is assumed, to melt down the soft and tender *Affections* of *Those*, whose *Understandings* can't be convinc'd: whilst all *Pity* and *Commiseration* are denied to an *Injured Country*. And then again, *Satire* and *Invective* take their *Place*; and all the *Springs* of *Indignation* and *Wrath* are put in *Motion*, against *Those* in *Power*; in whom their *Power* alone is *Guilt*, sufficient of itself to make all the *Guilt* of *Traitors* and *Conspirators* vanish, and be forgot.

They, who act, and talk, and write, in this *Manner*, must not wonder if there be *Others*, who are so far provok'd by the *Danger* to their *Country*, and to its *Government*, from *Heats* and *Passions*, artfully continued and revived by these *Methods*, as to enter into the *Cause*, and shew it in its true *State*. The only *Point* is, on which *Side Truth* and *Justice* lie; and in settling this, the *Person* accused, Great or Little,

has a strict *Right* to the *Impartiality* of our *Judgments*; and the *Persons* who accused and condemn'd Him, have the same. And this shall be my *Aim*, in the following *Papers*; to which I will strictly keep, without deviating to the *Right Hand* or to the *Left*, thro' *Favour* and *Affection*, or thro' *Prejudice* and *Ill-will*. The *Speech* of the late *B. of R.* is now publish'd. I call it so, though it appears to be done from a *Copy* written very hastily in *Shorthand* from his *Mouth*, because it agrees with *other Copies* so taken, and is really, in the *main*, what He said; tho' not always express'd in a perfect *Manner*. It wants sometimes *Words*; sometimes the right *stopping*; and sometimes the proper *Particles* of *Connection*. But it is truly his *Whole Defence*; in which not *One* thing that He alledg'd for Himself is omitted; as far as my *Memory*, compared with the *Memory* of *Others*, can reach back; who, as I told the *Reader* in a former *Paper*, attended, as *Many Others* were permitted to do, upon that *Affair*. I will endeavour, as I go along, to supply the *Defects* of the *Copy*: tho' the *Errors* are of that sort, that Every *Man* of *Common Sense* may easily, without *Help*, see what *Supplies* are necessary to make the *Sense* clear; and very readily perceive what *Transitions*, what *Stops*, or what *connecting Words* are wanting. And to make all the more *Methodical* and *Distinct*, I shall divide it as naturally as I can into its *several Parts*. The *First* will contain his *Complaints* of the *Usage* He met with in his *Confinement*. The *Second*, his *Account* of the *Reasons* He had for not appearing before the *House* of *Commons*. Both which relate to what pass'd before his *Appearance* at the *Lords Bar*. The *Third* will contain his *Complaints* of his ill *Usage*, and *Hardships* put upon Him, at that *Bar*, during his *Trial*, before his *Defence* was made. The *Fourth* will shew His *State* of the *Charge* against Him, and his *Direct Defence* of Himself from it. The *Fifth*, His more *Indirect Defence*, taken from the *Improbability* of it, deduced from several *Circumstances*. The *Sixth* will relate to his *Objections* against the *Nature* of the *Punishment* inflicted. The *Seventh*, to the *Danger* of the *Precedent* of such a *Manner* of *Proceeding*, as He represents this to be. And the *Last* will regard His *solemn Asseverations*, and *Conclusion*.

As We pass through these *Particulars*, and after We have done with them, several *Remarks* will arise upon those *Parts* of his own *Behaviour* at the *Bar*, both with regard to his *Judges* and the *Witnesses*, which cannot be understood from any *Thing* in his *printed Speech*; as well as many *Observations* upon the *Speech* it self, which will shew on which *side Truth*, *Honour*, *Temper*, and *Justice* lie. And as I think it my *Duty* to speak with *Freedom*; if, upon the *Whole*, it shall plainly appear, (as I can almost promise it will,) That, in his *Defence* of Himself, both as to the *Matter* and *Manner* of it, there is not *One* Sign of *Innocence*, but *Many* of *Guilt*; and (which is of more Account to some *Tempers*) that

that there are in it *very few Marks* of any thing like a *Great or Uncommon Genius*, so much celebrated by *some Persons*; but *Many* of something quite *contrary*: This will make still more evident the superior Glory of All that is Good and Right, by shewing that a *strong Understanding* constantly dwells with *Integrity* alone; but that it *abandons* Those who first *abandon* it; and gives up Those to the Guidance of their own *Choice*, who prefer *Wit* to *Good Sense*, and the crooked By-paths of *Craft* to the Strait and Unblemish'd Conduct of *Wisdom*. If the *Remarks* shall at any time seem a little hard, and in *Severity* something too pressing; I promise it shall be only such a *Severity* as results from the *Nature of Things*; and such as *Truth, Justice*, and the *Defence* both of the *Government* and of the *Govern'd Society*, make absolutely necessary. For, to use an Expression like his own, p. 11. *He is gone—I desire not to disturb his Memory, any farther than what is necessary for the Defence of my Country*: which is of much more Importance, than the *Defence* of any particular Man. I call it the *Defence* of my *Country*; and shall ever think it so, to remove those *false Colours*, to take off the Force of those *Insinuations*, to ward against those *Misrepresentations*, to disprove those *Falsities*; which, if supposed and suffer'd to exist in their full Force, must sink and ruin the *Honour* of the *Supreme Power* of the *Nation*; lessen all the *Regard* due to It from *Inferiors*; and go on to dissolve the present Frame of the *Whole Government*.

The *Two Leading Complaints* will not take up much of our *Time*. The *First* was design'd to make a strong Impression at the *Entrance* of the *Defence*. "The *Long and Close Confinement* He had been under—The *Severity and Indignity* he had been treated with; such as, He believes, no *Prisoner*—of his *Age*, and *Function*, and *Rank*, ever was—Such *Usage*, such *Hardships*, such *Insults*, as He had undergone—These are represented, as what had made Him *very unfit to make his Defence against the Bill*.—It is very easy for One long used to the *Arts of Oratory*, to magnify all *Imaginary Evils*, and willingly to forget the *True Ones*. This *Art* is skilfully managed here. The *Usage* He had met with, is to bear the Load of his *Unfitness* for his *Defence*. But the true *Cause* of that *Unfitness* is pass'd over in *Silence*. The only Thing which could make such a *Prisoner*, before such *Judges*, with his *Counsel* about Him, and sufficient *Time* allow'd Him, *unfit* for his *Defence*, was his *Guilt*. One *Grain* of this would weaken his *Defence*, more than a *thousand Loads* of *External Hardships* and *Insults*. And had He been *Innocent*, *Innocence* had been Support enough, where He now stood; and He had had no need of these *Complaints* of *Strength decay'd*, and *Spirits broken*. Not but that I can truly add, if I may have Leave to say so, that there was not the least Sign of such *Usage*, from any such visible Effects. For, I believe, there never was seen in any *Accused Person*, more *Fierceness*, or

Vigour, or *Vivacity*, (or whatever you will call it,) towards his *Judges* within, or the *Witnesses* without the *Bar*, than shew'd itself in Him. I can't indeed call it the *Assurance* of *Innocence*, which always is within due *Bounds*; but it was something which betrayed no *Decay* of *Strength*, or *Exhaustion* of *Spirits*. His *Confinement* and *Usage* were such, as are unavoidable in the *Case* of *Persons* apprehended for *High Treason*. Any other would be inexcusable in a *Government*, in so high a *Concern*; and defeat the very *Ends* of taking up such *Criminals*: and the *Expectation* of any other, absurd in the *Criminal* Himself. But since He forces the Remembrance of Men to look back, I cannot forbear to remark that One, who knows the *World*, and the *Way* of treating *Prisoners* in such *Cases*, would not have mention'd This, but for *some other Reason*, than what here appears. There is an *Art* in being the *first* to *complain*, of what a Person knows to have been laid to his own *Charge*. He was sensible, *Complaints* and *Discourses* had gone about of his own *Behaviour* in his *Confinement*, towards Those to whose *Care* He was committed: and I can't help thinking, that the *Inward Consciousness* of his having been Himself transported by the *Frailty* of *Humane Passion*, to do what had a little Appearance of *Insulting Others*, might induce Him to cry out publicly first, and to enter his *Complaint* here, as some *Apology* at least for Himself in those *Parts* of his *Conduct*. However artful this may seem in *general*; it was far from being so in *reality*, to give it as a *particular Reason* for the *Defects* of his *Defence*; when his *Innocence* did not only rely upon his own *Vigour*, but was aided by the additional *Strength* of his *Learned Counsel*, who had not been thus weaken'd by *Insults*; and when He Himself knew, there had been before a *proper Time* to have specified to the *Ministers* any *Particulars* of such *Unbecoming Usage*; and was well assured, that upon such an *Occasion*, They could not have denied Him *Redress*, even for *their own Sakes*. But it was not in his *Power* to give any such *Instances*; and therefore, the *general Complaint* was reserved for a *moving Exordium*, at once to *excuse* and *strengthen* the *Weakness* of his *Defence*.

The next Point is, His Account, Why He did not appear before the *House of Commons*, as the *Lords* had left Him at *Liberty* to do. His *Reasons* amount to this, "That the *H. of C.* had pass'd a *Vote* to this Purpose; That it appear'd to Them, that He was principally concern'd in—a detestable *Conspiracy*; and therefore, that it was in vain for Him, who was thus prejudged, to enter into any *Defence* before that *House*; since He could not hope to have made any *Impression* there, let his *Innocence* have appear'd never so clearly." But I shall not scruple to say, This could not be the *Reason*. For He, who knew *Parliamentary Affairs* so well, certainly knew that a *Vote* of that sort is not at all *Definitive*; but only a previous necessary *Foundation* for a *Bill*, against the

passing

passing of which that *Honourable House* are as much at Liberty to bear, and to determine, as if no such *Vote* had pass'd; and no more in the least precluded by it, from acquitting a Person who shall upon Trial appear *Innocent*, than a *Common Jury* is obliged to condemn every *Prisoner*, against whom a *previous Bill* is found, upon the first View and Appearance of Evidence. He might, with the same *Pretence*, have refused to come to the *Bar* of the *House of Lords*; and might have argued that They had received the *Bill* against Him from the *Other House*, and had unanimously agreed to the reading it *once*, and had order'd it to be read a *second* time; by all which Steps They had *prejudged* Him; and therefore, that He could expect no Justice from Them; and therefore, that it was in vain for Him to appear. Another *Reason* therefore, must be search'd after, for *this* Conduct; and I can think of *None*, but because it was imagin'd to be more *Cunning*, and more for his *Interest*, not to discover the *Topics* of his *Vindication*, or the *main Grounds* upon which his *Defence* should go, till He could surprize and overwhelm his *Adversaries*, with *All* at once, at the *Bar* of another *House*. Had it not been for some such Reason as this, He would not, by his *Refusal* of appearing below, have furnish'd that *Honourable House* with a *Compleat Justification* of their *Condemning* a *Man*, who disdain'd to answer to their *Charge* against Him; and who would not so much as give Them any possible Opportunity of acquitting Him. But it is a *Reason* indeed, which is not any *Mark* of that *Innocence*, which can never be afraid of producing all its Strength and Light before the whole World. And if I am out in this, yet it is a much more *probable Reason* than That here given; which is attended with this *unfortunate Circumstance* likewise, to prove it not the *true One*, viz. That after that *Vote* of the *House of Commons*, the *Prisoner* petitioned the *House of Lords* to know their *Sentiments*, upon a *Member* of their *House* appearing before the *Other*; and that He did not find out *this Reason* against it, till after They had left Him to his own *Liberty*: Whereas *This Reason* had equal Strength before; and, if good, took away all ground for his applying to Them, being sufficient of itself to have hinder'd his appearing below. These *Observations* fully shew the *Want* of *strict Truth* in this *Reason* here alledged; and the *Want* of all Force in those few *Ill-placed* and *Ill-grounded Expostulations* which immediately follow it, to the *End* of the *first Page*.

BRITANNICUS.

PAPER II.

THE Art of Complaining is of great Use to a Speaker, who is managing the Affections of his Judges to his own Purposes; if He can do it within the Rules of his Art, preserving Decency to Them, and Probability of Advantage to Himself. But there is a Nicety in This, as well

as Other Instances of Oratory, in a Man's Defence of Himself from an Accusation. Suppose a Prisoner in any Court, going to his Main Defence, should speak to his Judge, and let Him know that He had already, through the whole Trial, injured Him greatly; that He had denied Him the Means of clearing Himself; and shewn a determin'd Resolution to condemn Him, right or wrong: Would Any One scruple to affirm, that This was all an Artificial Design of covering the Weakness of his future Defence, by the Hardships pretended to be put upon Him; or rather, that the only View in This was, that it might hereafter move Compassion without Doors, it being impossible for Any One to imagine it could serve Him within Doors. Thus it is, in the preliminary Complaints of the late B. of R. about the Ill Usage and Hardships put upon Him, at the Bar of the House of Lords: Which is the Part of his Speech that is now in its Order to be consider'd. He is just going to begin his Defence of Himself from the great Crime of a Treasonable Correspondence; and He begs leave to speak to his Judges, the Lords, before He enters upon it, to this Effect. "My Lords, I must be so free as to tell You, that You have already, in the Course of this Trial, shewn Yourself Unrighteous, Partial, and Determin'd; You have denied Me many Instances of Common Justice; You have refused Me what was necessary for my present Defence: and I expect nothing from You, that is agreeable to Justice or Equity." What Others concluded from such an Attack, I know not. But I remember, I concluded from it, That the Speaker, being conscious within, that He had but a thin weak Defence of Himself to make, was resolved before-hand to lay in some Apology for it: and That, as the Speaker was too experienced an Orator not to know that this Usage must rather exasperate his Judges, than conciliate their Affections to Him; and too Cunning a Man, to do this without any End at all; there was an End in it: and these Complaints, and this Speech, (as well as Those of his Friend Mr. Kelly,) were calculated entirely for the People; and framed for the moving of the Passions without Doors, and not at all for convincing the Judgments or gaining the Regards of his Judges within Doors. In this View, there is some Sense, tho' no Honesty in them; in the other View, there is neither Sense nor Honesty in them: as I shall make appear, by a few just Remarks upon Every One of them.

1. The first Complaint is, Reading Extracts of Anonymous Letters, without suffering any other Parts of the same Letters, tho' relating to the same Subject, to be read. p. 4. This sounds a little hard at first Hearing; and carries along with it a very bad Representation of the Temper of his Judges. But when the Reader comes to know the true State of the Case, it will not appear of very great Moment. In the first place, it gives a wrong Turn to the Question, to call them Extracts of Anonymous Letters; which, properly speaking,

speaking, are *Letters* written by unknown Persons, or by Persons who will not be known to write them by Those to whom They are writ. Whereas, These *Letters* came from *Known Persons* abroad, whose Names were subscribed to them. And then, the Chief Point is, that this *Representation* of the Case is exceeding partial and unfair. These *Extracts* of *Letters* were read, not as direct Evidence against the *Bishop*, whose Name was not (I believe) mention'd, or pointed at, in any One of them: but They were read wholly and solely in support of the *Preamble* of the *Bill*, and of that general *Affertion* in it, that there was a detestable *Conspiracy* form'd and carried on, &c. The *Criminal* was no more affected by This, than if they had not been read; nor at all more hinder'd from any Proof of his own *Innocence*, than if no such *Letters* had been produced. This is plain from the Nature of the Thing. For what Hurt could it possibly do Him, to prove from such *Intelligences* from abroad, that there was a *Conspiracy*, or a Thousand *Conspiracies*, if He were *Innocent*, and could prove that He had no Part in them? And not only from the Reason of the Thing; but in effect from the *Confession* of All who opposed the reading those *Extracts*. For one great *Argument* was, What need of reading them; or what Reason for it, when the *House of Lords* had already (and that unanimously) voted, That there has been such a *Conspiracy* carrying on? and when no One doubts it, or pretends to doubt it? But there was at least this Reason for reading them, that it was more decent, and had a better Appearance, to read the Proofs of Every *Allegation* in the *Bill*, than to take Any One of them for granted. And I will appeal to any Impartial Judge, Whether, supposing these Proofs of a *Conspiracy*, affirm'd in the *Bill*, had not been offer'd and read; the same Persons, who now were against reading them, would not very probably have been much more strong in their Demand to have them read, as necessary for the Support of an *Allegation* in this particular *Bill*; and have represented the Evidence as defective without them.

I must not here dissemble, that the Point principally urged in the *Argument* against the reading them, was, that they were the Support of a *Bill*, which was in the End to affect a Man in his *Liberty* and *Fortune*; and therefore, ought not to be read, in the manner they were. But the Answer to This is obvious. For, as the proving by these *Letters* a *Conspiracy* in general, could no more affect the *Prisoner*, not named in them, than it could Any One of his Judges themselves; so, supposing it otherwise, it is evident that the Concession of Those who opposed the reading them, must have had the same Effect upon Him, in all respects. For where could be the Difference with respect to Him, whether the *Affertion* of a General *Conspiracy* was put into a *Bill* which was to affect Him, if guilty, without any thing read to support it, but merely as an undoubted uncontested

Point; or whether it was put in, supported by the Evidence of *Letters* and *Intelligences* from abroad. And I cannot but think that Every Member of that *August Assembly* would much rather have the Complaint of the *Criminal* stand, as it does now; than to have heard Him too justly complaining, (as He would have done in the other Way,) that there was nothing read in Evidence of a very important *Affertion* in a *Bill*, which was design'd to affect Him so greatly.

But I would not have the Reader here think, that the Manner of doing this, was the Result of an absolute *Implicit Faith* in the Ministers. For not only the Two Secretaries of State, but the Nine Lords Committees, to whom the Papers relating to the *Conspiracy* were refer'd by the House, gave the House perfect Satisfaction in the following Points; That they had seen the Original *Letters*, subscribed with the Names of Those who wrote Them: That the PARTS of them, now offer'd to be read, were faithful *Extracts* of whole Sentences or Paragraphs out of them; not *Abstracts* or *Abbreviations* of any Parts of them: That the Other Parts of those *Letters* of *Intelligence*, and the Names of the Persons who sent them, could not, in their Opinion, be laid before the Whole House, without the utmost Detriment to the Publick, and the utter Discouragement of All such *Intelligence* for the future, as might be necessary even for the Safety of the Nation: and That, in the remaining Parts of those *Letters* not disclosed, there was not any Sentence or Word, which either contradicted, or varied, or at all alter'd the Sense of the Parts now offer'd to be read. Upon which Satisfaction given to the House, upon the Honour of so many Lords, in a Case which, in the Nature of it, must be trusted as a Secret with some Persons, it was resolved to read them, in support of the general *Affertion* of a *Conspiracy*. And whether this deserved the Censure of Those, who would have had the same *Affertion* in its full Force kept in the *Preamble*, without any Proof read to it; or the Outcries of the Politicians without Doors, who knew not the State of the Matter; or the formal Complaint of the Prisoner, as of an Injustice to Him, whose Cause it could not alter, in the least Tittle, one Way or other; Let All who please, now judge.

2. The Second Hardship complain'd of, is, — Excusing the Decyphers from answering Questions ask'd by the Prisoner, and which He thought necessary for his Defence, lest They should reveal their Art. p. 4. The Hardship of this is represented so, as to lie in these Two Points, That He Himself thought these Questions necessary for his own Defence: and that the Decyphers refused to answer, merely for fear of revealing their Art; and were supported by the House in such Refusal, upon that Reason only. As to the former of these, If every Trial were to last, as long as any Criminal could invent Questions to ask, which He would affirm Himself to conceive to be necessary for his Defence, there is an End of all Trials; or rather, there never could be an End

of any *One Trial*. But there is always a *Measure* in such Things; and the *Judges* of the *Cause* are always supposed to be the proper *Judges* of what is so necessary, or so useful, that it ought to be admitted; and what not. And whoever considers the *Time*, and the *Patience*, consumed in the *Trial* now before Us, will not think that the *House of Lords* were ever backward to allow whatever was reasonable and fitting. And that no Injury was done to the *Prisoner* in this Particular, I dare say, may be proved from his own Mouth. For tho' here, in the *Tenderness* and *Passion* of Complaining, He represents these *Questions*, as necessary for his *Defence*; yet, the *Reader* must not imagine from hence, that He meant really necessary in the strict Sense of the Word. For, We shall see that, without the *Answer* to these *Questions* from the *Decyphers*, or without any *Regard* to their *Art*, He has, in his own Opinion, fully demonstrated his *Innocence*. That He had no part in the *Treasonable Letters* charged upon Him;—*This*, says He, (which is indeed all) *hath been made out—by such a Concurrence of Evidence, so clear, full, and legal, as I persuade Myself, can have left no Doubt remaining—*&c. p. 5. From whence it appears, that He was in no Manner of *Want* of any thing farther from the *Decyphers*, than what They had already answer'd, in order to his clear and undoubted *Vindication*. And this He knew when He made this *Complaint*: which therefore, must not be taken literally, even for fear of hurting Him who made it, and running into the *Inconvenience* of supposing, that, what was necessary for his *Defence* having been refused Him, He was not able, and had not in effect, made out his *Innocence*; contrary to what He Himself, and Those who upheld Him, strenuously maintain'd. The *Argument* is strong. He did, in his own Opinion, make out his *Innocence* clear and undoubted: Therefore, He could not in his Heart believe that Any thing necessary to his *Defence* had been refused Him.

But now, We will consider the *Reason* said here to be given for excusing the *Decyphers* from answering farther, after They had already answer'd a Multitude of *Questions*, viz. *lest They should reveal their Art*. And, supposing *This* to have been the sole *Reason* given; I say, the *Lords* would have been justified in not insisting any farther upon *Answers* from Them, by the Nature and Course of all such *Proceedings* in all *Courts of Judicature*. For when *Artists* of any sort are called to give *Testimony*, They are always call'd to do it under *Restrictions*; to do it in such a Manner only, as shall not hurt *Themselves*; as shall not disclose any *Secrets*, of which They are the *Masters*, to their own *Prejudice*; and a sort of *Implicit Belief* is always paid to what They answer upon *Oath*, if nothing appears to destroy it, without enquiring into those *Depths* and *Springs* of their *Art*, which it is not fit for Them to lay open; and which indeed, if laid open, could not probably, during the *Time* of any *Trial*, be sufficiently com-

prehended, or judg'd of, by *Strangers* to that *Art*.

But indeed, *This* was not the sole, or principal, *Reason* given for the *Refusal* of answering to some particular *Questions*. For it was urged several times by Mr. *Willes* (who shew'd a *Modesty* equal to his *Skill*, in all He said) that He apprehended the particular *Questions* proposed went too far; that the *Answers* to Them might not only be a great *Prejudice* to Himself as a *Decypherer*, with regard to an *Art* which lay in very few Hands, and was of that Nature at present, as to continue so; but also of great *Detriment* to the *Publick*, the Safety of which might often depend upon this *Art*. And He gave a very judicious *Reason* for it, that if He should answer *Questions*, which manifestly tended to nothing, but the laying open the whole *Ground* and *Method* of proceeding in the *Affair* of *Decyphering*; *This* itself, viz. the *Discovering* all his *Methods* of finding out the Meaning of the *Cyphers* He had interpreted, might the more readily lead *Conspirators* and *Traitors* to invent a perfectly new *Cypher*, which it might be perhaps impossible for Him, or Any One, to decypher; in which Case, whenever it should happen, the *Government* might suffer even a *Total Ruin* in some extraordinary *Conjunctures*. But this *Reason* the *Criminal* has thought fit artfully to conceal: Which, added to the Other, is fully sufficient to shew the *Weakness* of the *Complaint*; and to justify the *Proceeding* of his *Judges*, whom He has here represented, with great *Partiality*, as acting a *hard Part*, where They did Nothing but what *Custom*, and the *Nature* of the Thing, and the *Good* of the *Publick*, made reasonable and necessary; and Nothing that at all affected the *Tenor* and *Strength* of his own *Defence*. Nay, as I shall quickly shew, notwithstanding Another of his *Complaints*, They afterwards, upon His *Request*, allow'd Him a much long Opportunity than He Himself ask'd, of proving in Another Way the *Treasonable Letters* to be *falsely decypher'd*; which was the *Utmost End* of all his *Questions*; but which indeed at last, He would not so much as attempt to do. Judge from hence of the *Ground* of such *Complaints*.

BRITANNICUS.

P A P E R III.

THE Third Grievance which the late *Bishop* of *Rocheſter* complains of, in the *Course* of of the *Evidence* against Him, is, *The not suffering Him to be answer'd by the Clerks of the Post-Office, lest the Secrets of that Office should be discover'd.*—p. 4. Tho' this be not the true *Reason* of the Conduct of the *Lords*, here complain'd of; yet the *Fact* itself is thus far true, that, after the *Clerks* had answer'd many *Questions*, and the *Prisoner* was still going on to Others, the *House* thought best to stop, and enter into a *Debate*, whether it was fit that the *Questions* proposed, and Others which might naturally be supposed to follow, should be particularly answer'd;

swer'd; and, after a good deal of Time spent in considering the Matter, came to the following Resolution, viz. "That it is the Opinion of this House, that it is inconsistent with the Publick Safety, as well as unnecessary for the Prisoner's Defence, to suffer any farther Enquiry to be made, upon this Occasion, into the Warrants which have been granted by the Secretaries of State, for the stopping and opening of Letters which should come or go by the Post; or into the Methods that have been taken by the proper Officers at the Post-Office in Obedience to such Warrants." This deserves to be consider'd a little, with some Accuracy, that it may not appear to the World, that Unnecessary Hardships, or Unjust Difficulties, were put upon the Prisoner. And I can think of no better Way of putting it in its due Light, than, after having set down the very Words of the Resolution itself, to consider the Reasons urged against it by Those who oppos'd this Resolution; and the rather, because these Reasons have since appear'd publickly abroad.

The first Reason was taken from the Necessity of Cross-examining of Witnesses for the Defence of the Prisoner, and for the Satisfaction of his Judges: and therefore, these Clerks having been brought as Witnesses, relating to the stopping and opening Post-Letters, the Prisoner ought not to be debar'd the asking Them any Questions; nor the Lords be denied Satisfaction in what might help Them to form a Judgment,—the Validity of which (it is said) must in a great Measure depend on the Proof given of the Letters (now in Question) having been TRULY stop'd and open'd, as asserted. Whoever compares this Reason with the Resolution itself, will presently see that it proceeds upon a Mistake of what was the Point really over-ruled by the House. This Reason itself allows that this Fact had already been testified at the Bar, viz. that the Individual Letters then before the House were true Copies of Originals stop'd, open'd copied, and forwarded, at the Post-Office. This, I say, had been already declared upon Oath, by the Clerks who Themselves stop'd and open'd them. The Secretaries of State (or One of Them) added likewise the most Authentick Testimony that Orders were sent from the Secretary's Office, to the Posthouse, for this Purpose; viz. for the opening Suspicious Letters, at this Juncture, according to the Power vested in the Administration by Act of Parliament. The same Reason here alledged, not only allows, but asserts, that the Judgment of the Lords must in a great Measure depend upon the Proof given of these Letters having been TRULY stop'd and open'd, &c. And indeed, This was the only Fact of any Importance. Now if the Resolution of the House prevented no Enquiry relating to This, which could at all render this material Fact either more or less plain; then, it is evident, it was not liable to the Censure fixt upon it, nor a sufficient Ground for the Prisoner's Complaint. And that it did not, is plain, because the Resolution was not made till after repeated Questions had been ask'd

upon this Head; not, till after the foremention'd Evidence had been given upon Oath to this important Fact itself, viz. that these Letters were order'd to be stop'd, and were accordingly stop'd, and open'd, and copied, and forwarded.

The Resolution therefore, against farther Enquiry, was occasion'd by the Prisoner's Questions relating to the Secretaries of State Execution of the Powers vested in Them by Law; and to the Persons concern'd in conveying their Orders to the Clerks; and to the Manner and Method of stopping and opening Letters. These were the Points that it was declared Inconsistent with the Publick Safety to examine into, or to lay open. And the Reason given was very powerful; because, It was of no Importance to the House, in the Question then before Them, whether the Secretaries of State, or the Officers of the Post-Office, had conform'd Themselves to the Law in every Step They took upon this Occasion; or not: but it was fully sufficient that, whether the Clerks had Authority, or not, to do what They had done, still the Fact was so, and sufficiently attested, that these Letters were stop'd, and open'd, and copied, at the Office. If the Lords should think proper to enquire into the Conduct of the Administration, or the Post-Office, upon such Occasions, there would be a proper Time for That; and They had an undoubted Right to do it, if They should esteem it for the Publick Good: but it could not be fit, or necessary, to deviate from the sole Point now before Them, into what could not enlighten the Fact, but only create Suspicion and Uneasinesses about the Method and Manner of Management; which could not come upon the publick Stage, without affecting the Government itself, the Security of which in some Measure often depended upon the Secrecy of such Things, and the Implicit Trust necessary in such sort of political Affairs. So that You see, the Resolution of the House stop'd no Enquiry about the Matter of Fact; the stopping and opening these Letters, which the now mention'd Reason against it asserts to be the Main Ground of the Judgment to be pass'd: but only prevented the wandring into Other Disquisitions, which might have made the Trial to have lasted till this Time; and have turn'd it at last into a Trial of the Ministers and Officers of the Post, by the Prisoner and his Assistants, instead of a Trial of the Prisoner for Treason; and could have serv'd no Purpose of Upright Impartial Judgment, upon the Case then before the House. I have not mention'd, upon this Head, the great Injustice it would have been, to have oblig'd the Clerks of the Post-Office to have answer'd all the Prisoner's Questions; some of which were manifestly of such a Nature, as that their Answers to them must have been Self-Accusations, had They been guilty of any Unwarrantable Proceedings; and have subjected Themselves to the Penalties of the Law relating to this Matter: Which Reason alone would, upon the Foot of Common Justice, have justified the Lords in disengaging the Clerks

Clerks from all Obligation to accuse or hurt Themselves.

Another Reason given against this Resolution, is founded upon these Particulars, "That the House could not determine this farther Enquiry to be Unnecessary for the Prisoner's Defence, till He should come to make the Application; That He ought to have Liberty of asking what Questions He should think proper—without acquainting the House what Use He intended to make of them—That this is essential to Justice, and agreeable to the Practice of the Counsel against Him, in which the House had allow'd Them." And the Prisoner Himself, in a very high Tone, desir'd to be left the sole Judge of what was necessary for his own Defence, and what Use to make of any of his own Questions; and the like. I have observ'd in effect, upon a former Occasion, that if all Prisoners, in their Trials, could demand (in Justice) the Delay of their Sentence, whilst They themselves could invent One Question to ask, or one Proposal to make, under the Pretence that They thought this Question, or this Proposal, necessary for their Defence, and that They were the only Judges of what was so, Few Trials could ever come to an End. There must be a Measure laid down for such Things: and to say that it is impossible to judge any Point to be Unnecessary to the Prisoner's Defence; however it may sound; yet does not rely upon any reasonable Support. Let Us take the Instance now before Us.

If the Prisoner had propos'd by any of his farther Cross-Questions to have shewn that the Clerks of the Post-Office had given false Testimony to the only Fact in Question; and that the Originals of these Letters were NOT stop'd, nor open'd, nor copied, at the Office; Injury had been done Him, to have prevented the Answer to such Questions. But when He goes on to ask, How came You to open these Letters? By what Authority? By whose immediate Order? and the like; it cannot be unjust to stop Him. If any one asks, How do you know but that this is necessary to the Defence of the Prisoner? I answer, I know it evidently, thus: because, whatever the Result of such farther Enquiries be; it is all one to the Point that affects the Prisoner. If it should appear that the Clerks and Others had acted illegally, in coming at these Letters: yet still the Letters were in fact stop'd and open'd; and are Evidences against the Prisoner, of the same Force exactly, as if They had been stop'd legally, and in all due Form. Just as it is in another Case. Suppose a Person should by Violence, without Authority; or by Warrant from a Justice of Peace; break into Another Man's House, and seize in it Papers, or any other Things, which should be produced afterwards as Proofs of some great Crime against Him; the Prisoner would not be allow'd in his Trial, to ask by what Authority they were seiz'd; or, to enter into Enquiries upon the Legality, or due Form of the Warrant by which it was done: But if He could prove that these Things were not seiz'd

in his Possession, this would justly be allow'd; and this only would be judg'd necessary to his Defence. Nothing farther than this, in such Case, can be Essential to Justice; which must be render'd precarious, and even ridiculous, if every Individual Enquiry which a Prisoner can invent, to asperse Others, instead of clearing the Difficulty in Question, can come to be made a Necessary Branch of it.

As to the Counsel for the Bill, no doubt They were allowed to ask their Questions, and examine Evidences, without declaring to the House the End aim'd at, in Every Individual Question; because the Nature of Trials requires this Method of Proceeding, that the summing up, and applying the Evidence, come in Order last. But the same was allow'd the Prisoner likewise; and I will add, within the same Bounds too. For if the Counsel against Him were never stop'd in their Enquiries, it was because their Enquiries were always within due Limits, and restrained to the Facts before the House, upon which the Judgment was to rely: and if it had been otherwise, and They had launch'd out into Disquisitions about the Rules and Methods of carrying on publick Affairs, in the Secretaries Office, or the Post-Office; I don't doubt, They would not have been permitted to have gone on, but call'd upon, with some Severity, to keep strictly to the Point before them.

In a Word, As it was allow'd that the Judgment of the Lords was to depend much upon the Fact, whether these Letters were TRULY stop'd and open'd at the Office, or not; and as no Stop was put to the Prisoner's Enquiries, till after the Clerks had given their Evidence upon Oath, as to this Fact, and been question'd upon it; nor till He wandered to those Circumstances, which did not at all alter his Concern in it; and as All Lords were still at Liberty to judge whether Full Proof had been given of this Fact, or not: Certainly, Nothing can be imputed to this Resolution, but what was for the Honour of the Lords who made it; That in it They shew'd the Concern due to the Safety of the Publick, and the Justice due to the Prisoner, at the same time; and that They gave Him, in the present Point, all the Indulgence necessary to the clearing Himself; and stop'd Him in Nothing, but either a Wantonness of Questions, wholly imperinent; or a Designed Attempt of aspersing Others, rather than clearing Himself.

The next Complaint is much of the same Nature, p. 4—viz. "The not suffering a Person, who had been at least Ten Years out the Secretary's Office, to answer any Questions, about Matters which came to his Knowledge by means of his having been in that Office."—This again is thus far true, that Mr. Lewis (who had been Secretary under the last Administration of the late Queen's Reign) being call'd to the Bar by the Prisoner, and ask'd a Question; it was judg'd by the House, that a Gentleman who had been in a Post of such Importance to the State, ought not to give an Account

count of *Matters* which came to his Knowledge by his having been intrusted with Business of the highest Nature; and which, being so long ago past, could not directly, or in any degree, affect the Prisoner's present Guilt or Innocence, with regard to the *Treason* laid to his Charge. But, lest the Reader should think this Complaint of greater Importance than it was, I will acquaint Him, that the Whole of the Prisoner's Design here, appear'd to be no more than to prove that some Persons Hand-writing had been exactly imitated by Others. Accordingly, He ask'd Mr. Lewis this weighty Question, *Whether He did not once know a Person (naming his Name) who was very exact at this Imitation?* And it was very remarkable that, after the Resolution of the House was declared to Mr. Lewis, He took upon Him to tell the Lords a long Story of what had pass'd, and what He had seen of *This*, when He was in the Secretary's Office; and that the Lords (so much complain'd of) had the Patience to hear their own Order broke, as soon as it was made; and suffer'd Him to answer, at full Length, about this very Matter, which came to his Knowledge by his having been in that Office; and to give a tedious, and to the Cause in Hand an impertinent, Account of the Dexterity of a Man in imitating Hands, who Himself had been dead many Years ago.

What the End of the Prisoner could be in all this, unless to shew his *Unweariedness* and *Sagacity* in asking Questions, One can hardly imagine. For no Letters pretended to be in the Prisoner's own Hand, were now laid to his Charge. And as for Mr. Kelly; neither He nor his Witnesses would allow any sort of *Similitude* to Mr. Kelly's Hand-writing, in those charg'd upon Him: Nor did He accuse the Administration, or any employ'd by Them, of any Imitation of his Hand-writing. And I presume, had it been otherwise, it would have made but a poor Appearance of Argument, for the Prisoner to have urged, "There was a Man alive, above ten Years ago, that Mr. Lewis employ'd to imitate a Gentleman's Hand; (for that was what Mr. L. testified concerning Himself;) therefore, there is One now employ'd by Others to the same purpose." Or thus, "There is a Possibility of imitating exactly the Hand-writing of Persons; therefore, the Letters now in Question were all forged in the exact Resemblance of Mr. Kelly's Hand." Or thus, "There has been Forgery in these Affairs sometimes; therefore, there is Forgery in them always." This Way of Arguing would, I believe, have been accounted very mischievous to Truth and Justice in all Courts; as serving only to destroy all Moral Certainty, by virtue of a bare Possibility of Error; and to invalidate all Testimony in many very important Questions relating to the Rights and Properties of Mankind. And besides, it must have ended to the Prejudice of the Prisoner Himself; and his Friend Mr. Kelly. For, as this Allegation must go upon a tacit Supposition that the Three Letters charg'd upon Mr. K. as his Hand-writing, were

forged in exact Imitation of it; *This*, unless some Proof could be added of the Fact, could not but have led his Judges, from this express Allowance that they were exactly like his Hand, to believe them really to be his Hand-writing. And indeed, *This* I take to be the Reason why no Manner of Use was made, either by Mr. Kelly, or by the late Bishop Himself, of this pretended great Art of counterfeiting Hands; or of all the several grave Questions ask'd, and important Hints given, upon that Subject. For all ended, without a Word of Application to the present Case.

BRITANNICUS.

PAPER IV.

THE Fifth Complaint, made by the late Bishop of Rochester, relating to his Treatment in the House of Lords, is, *The Reading Examinations neither dated, signed, nor sworn to. p. 4.* This is express'd so, as to lead the Reader to imagine that there were several Papers of this sort read at his Trial; whereas there was but One that can be here meant. This was the Examination, or rather Confession, of Neynoe; drawn out of Three other Papers; read twice to Neynoe, distinctly Sentence by Sentence, at the Committee of Counsel; and own'd, every Word of it, by Him to be True before the Lords of the Committee, who all attested it: not indeed sign'd or sworn to, for this Reason alone, because He pretended to be at that Time preparing a more full and perfect Confession, which He would both sign and swear to. But, I must here refer the Reader to the Remarks upon Mr. Kelly's Speech, relating to Neynoe: and to what must soon follow, when I come to that Part of the late Bishop's Defence, in which He sets Himself to invalidate this Evidence. But as to the Reading this Paper at the opening of the Trial, it is enough to observe that it was not read with any false or deceitful Appearances added to it; but on each Side, understood and allow'd to be accompanied with the same Circumstances; to be the Paper of a Man now dead, not sign'd, not sworn to; and the like: and, (what still more shews the little Ground there was for this Complaint,) that it was permitted to the Prisoner, in his Defence, to read the Three former Papers of Neynoe's, tho' neither sign'd, nor sworn to; in order to make what Observations from Them He thought proper, to invalidate the Force of this Fourth Paper, upon which alone his Accusers laid any Stress.

The next Complaint is, *Reading Letters supposed to be Criminal, writ in another Man's Hand, and supposed to be dictated by the Prisoner, without offering any Proof that He either dictated them, or was privy to them. p. 4.* This Complaint is express'd with some Obscurity. One of the Learned Counsel for the Bill, in his Reply, seems to understand it, as a Complaint that no Proof had been given of his having had the least Concern in the *Treasonable* Letters writ in Mr. Kelly's

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Hand.

Hand. But I presume, the Prisoner would have been so far from *complaining* of This, as an Instance of *Unjust Treatment*; that He would have been *thankful* for it, as an Instance of the *Justice*, or *Blindness*, of his *Prosecutors*; and that He would not have put it into the Catalogue of his *Complaints*, but of his *Triumphs*. Besides, the *Complaint* is not that NO sufficient Proof had been actually made thro' the *Trial*; but that NO Proof at all had been offered; which must refer only to the *Time* of reading the *Letters*. And therefore, As He is in this Place *complaining*, not of the *Weakness* of the *Evidence* produced; but of several Instances of *Unjust Treatment*; I suppose, He must intend by This, that these *Criminal Letters* had been read in support of an *Accusation* against Him, without a *previous Proof* that He had either dictated them, or was privy to them; and that his *Meaning* was to lay it down, That there ought to be a *Proof* made of a Prisoner's Concern in any *Letters*, BEFORE such *Letters* are read against Him. In the former Sense, Mr. *Weare* very well observes, That this *Complaint* begs the *Question* entirely, upon the whole *Trial*; and supposes NO Proof given, thro' the Course of it, of what was the only Point of any great Importance against the Prisoner: and therefore, is too absurd to be supposed to be the *Meaning* of it from One who in his following *Defence* directly sets Himself to answer the *Proofs* alledged for that very Point.

In the latter Sense, (which yet must be the true one) the *Complaint* is *frivolous*, I own, to a degree almost of *Absurdity*. For of what Importance is it to the *Innocence*, or *Guilt*, of a Prisoner, whether the supposed *Proofs* of his Concern in *Treasonable Letters*, are made before the *Letters* are read, or after? The *Prosecutors* of the *Charge* read those *Letters*, under a double Consideration: as *Letters* which manifestly proved in general a *Conspiracy* on foot; and as *Letters* which They should, in the Course of the *Trial*, bring *Evidence* to prove to have been dictated to Mr. *Kelly* by the Prisoner. And since it could not affect either the *Method*, or *Clearness*, of the Prisoner's *Defence*, whether They produced their *Evidences* of this particular *Charge*, before the reading the *Letters*, or after; NO *Injustice*, or *Hardship*, could possibly be done to Him in this Case: and therefore, no Ground given Him for the least *Complaint*. On the other Hand, It may be supposed very right, on many Accounts, for the *Prosecutors* to chuse the *Method* of *Proceeding* They did; particularly, because Some of the *Proofs* of a Person's Concern in any *Letters*, often arise from the *Internal Characters* of them; from some *Expressions*, or *Circumstances*, contain'd in them, which help to fix them upon Him; which sort of *Proofs* cannot arise but after the reading and considering the *Letters*: and because, in the other *Method*, the *Evidence* upon the whole, must have lain in a less compact and methodical Compass; and its several Parts have been much more disjointed and dispers'd from one another. I should not at all

wonder therefore, at the Prisoner's wishing the Counsel had taken a less effectual Method than They did: but I should indeed, wonder at His making their *Prudent Conduct* the Subject of a *Complaint*, if I had not learnt that a very *Weak Defence* from a *Real Accusation* sometimes seems to be help'd out even by a *Weaker Complaint* of any pretended *Hardship*; because the *Passions* of Many make Them much more attentive to the One, than regardful of the Other.

The next *Complaint* of the Prisoner is, Not allowing Him Copies of the Decypher'd Letters, (tho' petition'd for,) till the Trial was so far advanced, and He so employ'd and weaken'd by it, that He had not sufficient Time to consider them. p. 4. But in this *Complaint*, I must freely say, I know not whether most to admire the *Artfulness* of one Part of it; or the *Falseness* of the Whole: Both of them little becoming the Character of Him who made it! The *Artfulness* lies in the Choice of Words, which, literally taken, cannot be said to signify an *Untruth*; but yet which deceive and impose upon the Reader, as much as if They did, by giving Him a *Notion* of the Thing as distant from the Reality of it, as *Falseness* is from *Truth*. In the first place, That the Prisoner ask'd for the Original Decypher'd Letters themselves to be put into his Hands, in order to examine the *Truth* of the Interpretation put upon them by the Decyphers; is, I believe, true. Whether He ask'd for Copies of them, at first, I am not certain. If He did, then this first Part of his Allegation is literally true, That He ask'd for Copies of those Letters. But in the next Place, that Copies of them were not allowed Him, till the Trial was so far advanced, and He so weaken'd by it, that He had not sufficient Time to consider them, is at best a *Gross Prevarication*, and *Unworthy Misrepresentation*; which cannot do Him nor his Cause any Service, proportionable to the *Mischief* and *Scandal*, the Detection of such *Low Art* must bring along with it. The Fact was thus. The Prisoner Himself (I remember it very well, because the Aire and Manner of his speaking made an Impression upon Me;) He Himself stood up, and declared, in his usual Tone, that He saw enough, by casting his Eye upon the Decypher'd Letters, as He stood at the Bar, to make Him confident They were not rightly interpreted. And, My Lords, (this was his very manner of Expression) "Let Me but have Copies of them this Evening; and I undertake, by To-morrow Morning, Myself to demonstrate to You, that they are falsely decypher'd." Upon this immediately, Copies (true undoubted Copies, to his own and his Counsel's entire Satisfaction) were order'd to be deliver'd to Him. They were so: and He had not only his own Great Skill in that Art of writing in Cyphers to have recourse to; (which He really was so free as to own, and shew Himself in some degree a Master of;) but He had then in Town with Him, a Person from Oxford, very learned in the Art, and who without doubt was ready, as it was his Duty

Duty to be, to give Him all the Assistance, which his Skill and Labour could afford Him. But what became of this great Boast? The next Morning came; and the whole Day past, and the House heard nothing of the Decypher'd Letters: only at the Close of it, (or of the next, I can't exactly remember which,) One of the Prisoner's Counsel let the Lords know, that They should go upon that Subject, the next Morning. The next Morning came, and the same Counsel acquainted the House, That the Bishop would not give their Lordships any Trouble upon that Head; but rest Himself upon the general Observations formerly made at the Bar, when the Decyphers were there. So that, You see, the Prisoner had the Copies of those Letters, a Day and a Night (at least) longer than He Himself had assured the House, was necessary to his own shewing the Mistakes of the Decyphers in interpreting them; that the doing this effectually did not depend upon his own Abilities, or at all fail by the Length of the Trial weakening Him; but depended upon a much more Skilful Man in that Art, who was all the while assisting Him, and could have found out these manifest Mistakes, if there had been any; and consequently, that This Complaint at once is a manifest Argument of his own Insincerity, and leads to an authentick Testimony to the Truth of the Decyphering. It is made by One, who at the Time of making it knew it to be Groundless; and dress'd it up in False Colours: and it ends in this, That the most Skilful Man He could summon was not able to find One Error in the Decyphering, worth mentioning to the House.

Before I leave this Subject, I will add one Observation more, viz. That this same Complaint will itself furnish a Proof that the Art of Decyphering is not of that Uncertain Deceitful and Precarious Nature, that some Persons were willing to make it, whilst the Fate of the Prisoner depended in any Measure upon it. He Himself assured the House, that He saw so much into those Letters, that He could undertake Himself to demonstrate their being falsly decypher'd. And this subsequent Complaint goes upon this Supposition, that if He had had Copies of them earlier in the Trial, He could have done it. All this amounts to a plain Acknowledgment that there are Rules belonging to that Art, which have a Certainty in them, tho' neglected or transgress'd by Some in their Operations. Just as it is in Arithmetick. No One can undertake to shew the Errors of Another in any Arithmetical Operation, without supposing there are Rules belonging to that Art, which are in themselves Certain, tho' transgressed by particular Persons. Nor is this ever esteem'd any Reflection upon the Art itself; but only upon Those who profess it, and fail in their Application of its Rules. This will help to shew Us, in what Sense the Art of Decyphering may be said to be Uncertain or Deceitful, viz. solely, as it is profess'd and exercis'd by fallible Men, who through haste, or inadvertency, may err in their Operations

in that Art, as well as in Arithmetick; but not consider'd in itself, as it is founded upon numerous Rules and Methods, which, when applied by different Persons, and in repeated Trials, cannot all be supposed ever to coincide and centre in a Sense which is not the Real Sense of the Writer. Accordingly, Both the Decyphers, employ'd by the Administration, (who had at a great Distance from One Another agreed in the same Sense of the Cyphers used in these Letters,) did declare, that They looked upon the Art as having a Certainty in it, which might in some Sense be call'd Mathematical Certainty: They had for many Years tried it, by the Rules They had laid down, and it had always answer'd: That They had undergone Multitudes of Trials, to convince Themselves and Others, and that they had all ended to their Satisfaction, and in the Discovery of the very Key by which those Cyphers design'd to prove their Skill were form'd, and acknowledg'd so to be by Those who form'd them. Nor did the Prisoner Himself, at last, insist upon the Uncertainty of the Art: Nor had his own Decypherer so little Judgment as to furnish any Argument to that Purpose. He would have proved the Letters falsly decypher'd, if He could. But if He had done this, He would only have shewn Himself a greater Artist than Those on the other Side: and This (as in the Case of Arithmetical Operations) would have been to the Glory, and not the Diminution, of the Art itself.

I have thought it proper to say thus much, because this Point has been much misrepresented, especially by the Advocates for the Prisoner without Doors; who have falsly laid it upon the Decyphers themselves, That They allowed their Art to be Deceitful and Uncertain; whereas Neither of Them allowed any thing, but that there might be an Error committed by Themselves, in their first Trials, which itself is corrected afterwards by their own Rules. Thus Mr. Willes candidly acknowledged that He had mistaken Two Words, (Care for Concern, and provide for procure, or the contrary) but both much to the same Sense. But this did not make Him accuse the Art itself of being Uncertain and Deceitful. And that the mere possibility of Mistake is no Argument against the Testimony given upon Oath, in Courts of Judicature, by Persons skill'd in this Art, and allowed to be canvass'd by Others professing the same Art, is plain, because this Argument, if allowed, would tend to destroy all Testimony of Witnesses, founded even upon their Senses of Seeing and Hearing: For these Senses may be proved, by a thousand Instances, to have been frequently and grossly deceived; and therefore, not infallible; and therefore, not to be depended on. Such Reasonings are utterly inconsistent with the Well-Being of Humane Society. But as for the wretched Misrepresentations of this, and every other Part of this Trial, in Papers without Doors, One cannot long wonder at them, when One sees, in the same Papers, all the Laws of

of God and Man violated every Day, rather than *Treason* shall not be vindicated; and the faithfullest *Servants* and *Friends* to their *King* and *Country*, beyond all Example, and without all Truth, abused and exposed to popular Rage.

The last Complaint is, *The not allowing the Prisoner to read out of the Collection of Papers before the House, any Part of them in order to discharge Himself, but what had been read by the Clerks.* To which I shall only say, It is in part false, and in the whole entirely groundless. False, because He was permitted to read several of those Papers, which were not read on the other Side; particularly the *Three first Examinations of Neynoe*, — the *Papers taken in Neynoe's Pocket*, — the *Certificate of the Surgeon sent over by Mr. Crawford*: and False again, because He was told He might read any of those Papers, which He could think necessary to his Defence from the Charge which was actually laid against Him: and Groundless, because He was only refused the reading of *One Paper*, upon his own Acknowledgment that He desired it in order to raise an *Objection*, or make his Defence, NOT against what the *Bill*, or the *Counsel for the Bill*, had at all laid to his Charge; but against quite Another Point, not in the least insisted on, or urged against Him. Let the World judge, whether *This* were hard or unjust, to keep the Prisoner to the Charge which was made against Him, and not to suffer Him at his own Pleasure to wander to a Charge that was not made against Him: that is, to allow Him every thing necessary for his Defence against the *Former*, which was the sole Point of Concern to Him; and only to debar Him from abusing the *Patience* of his Judges with what was of no more Importance to the *Bill*, than if He had desired to read *Proofs* of his being a *Protestant Bishop*, or any the most distant Point imaginable.

We are now come to an End of his Complaints, by which He intended to enter into the Compassion, not so much of his Judges, who knew how groundless They were, as of the World afterwards. I have been the more particular in considering Them, because They are apt to move, more than Argument is to convince: and because, it is much more fit His Judges should be justified in what They did right, than that He should be pitied for what He represents wrong; and lastly, because Those *Excellent Arguments*, now in Print, in Answer to the Prisoner's Speech, do hardly at all concern *Themselves* with the Complaining Part of it.

BRITANNICUS.

P A P E R V.

SINCE the Writing of my last, Mr. Wynne's Defence of the late Bishop of Rochester is come to my Hands. And finding that in p. 17. He sets Himself to confute the *Evidence* against his Client, taken from the Art of Decyphering, of which I said a good deal in that Paper; I thought my self obliged not to pass over what He al-

ledges, upon a Subject, I had undertaken to consider; tho' in Truth He only touches upon it very slightly and tenderly. He begins his Argument with a Name of very great Authority.

"Dr. Wallis, (says He) who is allowed to be the Father of the Science, (such as it is,) and was the Wonder and Envy of all Foreigners, directly owns that the Whole was built upon Conjectures, and He that had the best Guess, was the best Artist. Such, my Lords, is the Science of Decyphering. And from such Uncertain and Conjectural Premises, what Certain Conclusion can be drawn?—And 'tis plain Mr. Willes is not so infallible as He pretends to be, by that Number of Passages not yet decypher'd." After which He insinuates something against its being allowed as Evidence in any Trial. But this way of Representation is not at all exact. Dr. Wallis was a very Great Man in all respects, and a very great Master of Decyphering; but never could be thought to be the Father of an Art, which was in Being many hundred Years before He was born. He knew it, and had experienced the Truth of it, in Multitude of Important Trials, too well, to say that the Whole was built upon Conjectures, in any such Sense, as would represent it a mere Imaginary, Slight, Deceitful Art. In another Sense, it may indeed be justly said to be founded upon Conjecture; as the First Trial of an Artist to find out the Key to a Cypher, may be call'd Conjecture, or Guess; which Conjecture He tries by his Rules, applied to the whole Writing, and does not receive it as Truth, consider'd at his Conjecture, but only as it shall be found to answer exactly in all respects, applied according to the Rules of his Art. If it does not so answer, He has recourse to Another and New Conjecture, till He meets with One that does; or till He finds by the same Art the Discovery to be impossible. But indeed, the Whole of this is a Satire upon Dr. Wallis, under the Pretence of a Complement. For He little deserv'd to be stil'd the Wonder or Envy of Foreigners, or the Admiration of his own Countrymen, if He could spend so many weary Hours of hard Study, in an Art, which He Himself, according to Mr. W. must have esteem'd so contemptible, as to be unworthy of a Wise Man; and in assisting the State in Discoveries, which it must have been unworthy of a Good and Honest Man to have done, if He had thought them founded upon Nothing but Vain Conjecture, and Uncertainty.

With the same Justice, Mr. Wynne represents Mr. Willes, as pretending to be Infallible: Whereas, on the contrary, He had own'd, that it was possible for Himself to err; but this, without disgracing the Art itself, as an Uncertain, Deceitful Art. As to the Number of Passages still left undecypher'd, (by which Expression, a Common Reader would imagine some important Defect to be meant;) Let Any One but look into the Report, and particularly upon the Three Treasonable Letters in question, and

and He will see presently, by the *Strokes* made where the *Undecypher'd Words* were, of how small Account, as to the *Whole*, those are. But, as far as the *present Objection* against the *Art* is concern'd, This is not the least *Proof* of the *Uncertainty* of it. This shews indeed, that there are *Cyphers*, which come so seldom over in the *Correspondence*, or are so artfully framed, that the *Decypherer* could not be *positive* what They signified; tho' in this Case, He was well satisfied what They *probably* meant. And Who ever denied this? Nay, Who ever denied that it is *possible* to frame even an *Entire Correspondence* in *Cyphers*, which shall not be detected? But this does not shew, that the *Art* of a particular Man, as far as it reaches and professes to go, is *Uncertain* or *Deceitful*; no more than it would prove *Mathematical* or *Astronomical Knowledge*, as far as it reaches, to be *Deceitful* and *Uncertain*, to alledge that there are *some Things* still out of the Reach of the greatest *Mathematician* and *Astronomer* of this or former Ages.

But I would not have it thought, from my using the *Instances* of *Arithmetick* or *Mathematicks*, that I put the *Art* of *Decyphering* exactly in the same Rank. I have only made use of Them, to shew the *Frivolousness* of the *Objections* made against that *Certainty* in it, which it is reasonable, and agreeable to all other *Maxims*, in *Affairs* and *Trials* relating to *Humane Society*, to receive, and acquiesce in, as a sufficient Ground of *Judicial Proceedings*; unless overturn'd by *contrary Evidence*, or *contradictory Circumstances*. And I will add one *Observation*, which I should hope might have some Weight, *viz.* That if the *Art* of *Decyphering* be judg'd to have so little of *Certainty* in it, (when duly applied and examin'd,) as to make it *Unjust* and *Unrighteous* to build any thing upon it in *Judicial Proceedings*; then, *Every Government*, and *Every Civil Society* in the World, must of Necessity be undone, without any *Remedy* to be had from all the *Best Laws*, which the *Wiseest Heads* could contrive, or put in Execution. The Reason is plain: because, upon this Supposition, All *Traitors* and *Conspirators* might *securely* carry on the Worst of their Designs, by enjoying the Benefit amongst Themselves of a *Correspondence* in *Cyphers*; whilst the *Government* that is to be destroy'd by it shall have no Possibility of acting, till the *Blow* is struck, without transgressing the Rules of *Justice*; if it be *Unjust* to take *That* for the *Meaning* of *Letters* in *Cypher*, which several Persons most skill'd in the *Art* of *Decyphering* shall agree, after repeated *Trials*, to be the *Sense* of them. And it being *absurd* to suppose that the *Case* of *Society* and *Government* can be left in such *Unhappiness*, that there shall not be, in the Nature and Reason of the Thing, a *Security* for it against the *Ruin* of *Treason*; it must therefore be true, that a *Government* is justified in having Recourse to the *only Method* of detecting *Treason* under the *Covert* of *Cyphers*; and that *that Method* is as just and well-founded, as

it is *useful*, and absolutely *necessary*. This Consideration has made Me the longer upon this *Subject*; because if this sort of Evidence be exploded, there is an End of all Hope of *Safety* to any *Government* in the World.

Before I wholly leave the *Head* of the late *Bishop's Complaints*, I must not omit what He alledges at the *End* of them, as an *aggravating Circumstance* of all these *Hardships* laid upon Him by his *Judges*, and at the same time, as a great *Inconsistency* in the *Conduct* of his *Prosecutors*, and the *Counsel* for the *Bill*. "And all this (says He) in a *Proceeding*, where the *Counsel* for the *Bill* profess They have no *Legal Evidence*, and that They are not to be confined to the *Rules* of any *Court of Law* or *Equity*; tho', as often as it is for their *Service*, They constantly shelter Themselves under those *Rules*." How true it is that the *Counsel* allow'd that They had no *Legal Evidence*, We shall see when We come to the *Remarks* upon this *Method of Proceeding*: where We shall find, in what particular *Sense* *One* of the *Counsel* did allow *This*, whilst the *Other* expressly and justly affirm'd the *Evidence* to be *Legal*, in the Place where it was produced. That in the Matter of *Evidence* before the *Legislature*, They ought not to be confined to the *Rules* of *Inferior Courts*, will come likewise there to be consider'd. According to this *Maxim*, I have heretofore shewn, in Answer to his *Complaints*, that the same (or greater) *Latitude* was indulged to the *Prisoner*, which was allowed to the *Counsel* for the *Bill*; free from the *Restraints* used in *Inferior Courts*, and bounded only within the Limits of the particular *Charge* laid against Him, to which He was indeed, in some measure, confined; only not so strictly, as in *Justice* He might, and ought to have been.

I shall only now speak *one Word* upon that supposed *Inconsistency* here mention'd, and to my great Wonder, often in the *Course* of the *Trial* objected to the *Counsel* for the *Bill*, as if They unfairly took the *Privilege* of going into the *Methods* of the *Courts* below, whenever it made against the *Prisoner*; and of rejecting the same *Methods*, whenever They could be to his *Advantage*. Whereas the Case was nothing like this; and their *Argument* upon this Head just, and of quite another Frame. In the *Process* of the *Trial* it was often objected to the *Counsel*, that the *Methods* taken by Them would not be allow'd in the *Inferior Courts* of *Westminster-Hall*. The *Answer* was just and natural. "We allow this. But We are now in a *Place*, where all *Kinds* of *Evidence* have a *Right* to be produced; and where We are not at all confined by *Rules* framed for *Other Places*; but by *Reason*, and *Common Justice* only." When, on the other Hand, the same *Objection* happen'd, in the Opinion of the *Counsel*, to be applied in a *mistaken Instance*; or when They could maintain that such and such *Papers* or *Evidence* would be received in *Courts* below; They had then a *Right* to argue unanswerably, "This which

We now offer would be received even in the Courts below; confined as They are: much more ought it to be receiv'd in a Place, not confined by such Rules." No Two Propositions certainly can be more Consistent than these Two. "We have a Right to produce This or That Evidence before the Parliament, though the Parliament itself, or Custom, has for the Convenience and shortening of Trials, forbid Inferior Courts to receive it; because We are not here tied up to those Rules." And again, "This or that Evidence certainly may of Right be produced before the Parliament, because it would be allowed, even in an Inferior Court." Which must be a good Argument, even to Those Lords who were willing to confine Themselves to the Rules below, as well as to Those who were not; and therefore, very proper to be made use of at Their Bar, when there was a Just Occasion. And This was All the supposed Inconsistency, all the sheltring Themselves under Cover of the Inferior Courts, that I could observe in the Counsel for the Bill; with which the Prisoner yet thought it worth his while, tho' very unjustly, to reproach Them. We are now coming to something much more Material.

According to the Division I at first made of the (late) Bishop of Rochester's Defence into its several Parts; after his Complaints of Unjust and Hard Usage at the Bar, next in order comes the Fourth, and indeed the Principal, Head of the Whole; and that is, "His State of the Charge against Him, and his DIRECT Defence of Himself in Answer to it." I call it Direct, in Opposition to that Indirect Defence, taken from a Number of Probabilities urged against the General Imputation, which follows it, and will in its order, make another Head of Discourse. I should perhaps make some Apology for entring now upon a Province, in which the Arguments of Both the Learned Counsel for the Bill, and of a Right Reverend Prelate, now publish'd to the World, might well appear to make every Attempt of this sort Unnecessary, and almost Inexcusable. But as I had begun my Design, before the Publick was happy in their Thoughts; and as all the several differing Lights, in which so Important an Affair can be placed, may be of great Use to Different Persons; and as these Papers, may, in the Nature of them, come into Multitudes of Common Hands to which All Others do not reach; I have persuaded Myself not to interrupt my first Design of going through Every Branch of the Speech, as it lies now before the World; and of contributing the little in my Power towards a Right Judgment concerning a Procedure, than which None ever was more misrepresented, or misunderstood.

The Charge (says the late Bishop) is divided into Two Heads. First, "That I traiterously conspired and corresponded with divers Persons, to raise an Insurrection, &c. in this Kingdom, to procure Foreign Forces to invade it, &c. p. 4. In Answer to this, He might well have spared all the Pains and Time He spends in observing that

"the Counsel for the Bill had not attempted to prove Him at One Consultation; that there was nothing tending that Way, except the exploded Story of the Burford Club, and two or three Hearsay Informations." He might have spared his History, how often, or how seldom He had seen such and such Lords, whose Names were not so much as mention'd in his Cause: Nor need He have told his Judges, when and where He met Sir H. Goring; or what Profession Sir H. design'd any of his Sons for; or what Engagements He had enter'd into with Him, to get his Son upon the Foundation at Westminster-School. As Nothing leading to these Important Particulars, had been alledged by the Counsel against Him; so, if Any Other Person in the like Circumstances had thus wandred from his Cause, except such a Genius as He, who was already in Possession of a Great Name for Wit and Abilities; I am fully perswaded, such Digressions, void both of Use and Entertainment, would not have been accounted Arguments either of his Capacity or Dexterity: Nay, I believe I may say, would have been number'd amongst the Impertinencies of a Guilty Man. For there is but One Way of solving such Appearances, That an Innocent Man needs them not; and that a Guilty Man only makes use of Them, in hopes of diverting his Judges, or his Readers, from the Things of greater Importance which touch Him too close in the Real Charge made against Him. It was to This, which the Counsel for the Bill had, with all their Might, applied Themselves. They laid the Strefs of their Charge against the late Bishop, upon his having employed Kelly in writing Treasonable Letters; and the like. This when made out, They esteem'd sufficient Evidence of his being engaged in the Design and Conspiracy charged upon Him, and mentioned in these very Letters, as a Thing in which Others had been concern'd with Him. But They laid no Allegation against Him, of any particular Place, Time, and Company, for treasonable Consultations; justly esteeming Themselves to have enough against Him, from Other Evidences, to prove Him Guilty of the Charge. And indeed, He seems, Himself, to be conscious that He was here far out of his Way, and only avoiding the Blow. For when He comes to the other Branch of it, He introduces it in these Words, "The next, and the only Material Part of the Charge, is Corresponding abroad with the Pretender, &c." Let us therefore, at length, leave Digressions and Amusements, in so weighty a Point; and come close to that Real Charge; upon the Evidence or Non-Evidence of which, the Guilt or Innocence of the Person Condemn'd, as well as the Justice or Injustice of his Judges, must depend, in the Opinion of all Mankind. This will be the Subject of the next Paper.

BRITANNICUS:

PAPER

P A P E R VI.

IN p. 5. the late *Bishop* of *R.* comes to what He rightly calls *the only material Part* of the Charge against Him. And this He opens in the following Manner. "The true State of this Part of My Charge, as well and as fully as I can recollect, is this, (I will not in any degree dissemble before You:) 1st. That I did the 20th of April 1722. dictate Three Letters, to Mr. *Dillon*, the late Lord *Mar.* and the Pretender Himself, under the feigned Names of *Chivers*, *Musgrave*, and *Jackson*; to which Letters the Names of *Jones*, *Illington*, and 1378, were all by my Direction subscribed." This He makes One Branch of the Charge against Him; tho' it may indeed be in some Sense call'd the *Whole*, being That upon which his Innocence or Guilt must depend. And therefore, I shall now consider it as such. The First Step is, to state it right: for I must take the Liberty to observe, that Some sort of Persons never deceive You more, than when They make Professions of not doing it; and never dissemble less, than when They assure You, They will not dissemble at all. Look carefully upon me, (says the Man who deals in Legerdemain-Tricks,) You see all is fair; and immediately, puts the grossest of all his Deceits upon You. I will not (says the Bishop) dissemble the Force of the Charge: and immediately, before your Face, as soon as He has so said, He states it in a Manner the most dissembling; and artful enough, till it is detected. The Charge, if You will believe Him, was, That He did on the 20th of April, dictate the foremention'd Letters: Whereas, in truth, It was quite otherwise; and the Real Charge, if You will trust Those who made it, was, That He dictated Those Three Letters, which were afterwards put into Cyphers, and dated Apr. 20. and so sent away. There is so great a Difference between these Two Propositions, that I do not wonder, an Accused Person should chuse That, (as the Charge) to which He was most sure of giving an Answer. According to the former of them, He represents his Accusers as little better than Idiots, undertaking to prove the Fact of his having dictated those Letters at such a particular Time: which would have been the Absurdest Attempt in the World, unless They had had the Testimony of Him to whom they were dictated; which They knew They had not. According to the latter, His Accusers undertake to shew, that He did some Time or other, before the 20th of April, dictate those Letters; that He was the Person, in whose Name They were writ; and privy to the writing and sending them; and, therefore, guilty of this Correspondence.

In support of This Charge, as I have with strict Justice stated it, I shall now put into Form the Evidence, or Proofs of it: and then, consider his Defence, and shew how little it affects the true Charge; or any other, than his

Dissembled False Representation of it: adding at this Time only one short natural Remark, That, as He who could give a sufficient Answer to the Real Charge made against Him, need not to have invented and framed a False One; so, He who has taken Refuge, at the very Beginning, in a Wrong State of the Charge, was conscious He could give no Answer to It, fairly and rightly stated. The Arguments, as They appear to me, here follow. "Mr. Kelly wrote these Three Letters. He wrote them in the Person of the late Bishop. Circumstances in them describe Him to be the Person. The Names subscribed are the fictitious Names by which the Bishop was detected in this Correspondence. Mr. Kelly was an Acquaintance, and Friend of the Bishop's. Therefore, the Guilt of the Correspondence is justly fixt upon the Bishop, as employing Mr. Kelly to write them." That Mr. K. wrote these Letters is proved, not only from Witnesses to his Hand-writing; but (what is never to be evaded) from Kelly's calling at a Coffeehouse Himself, for an Answer from abroad; and from his employing one Andrews to receive Answers; to which two Particulars He Himself has never pretended to give any Reply. That Mr. K. was an Acquaintance and Visiter of the Bishop, was proved and owned. Nay, It was acknowledged by the Bishop that Mr. K. furnish'd Him with Beaver Stockings and Gloves: which not only proves an Acquaintance; but that the Bishop was privy to his Foreign Journeys, in which He procured Him these Things. But He gave no Account at all, how He came to have this Free Correspondence with a Young Nonjuror, who had deserted his own Profession, and turn'd Traveller for the Good of the Pretender's Cause.

That the same Mr. Kelly did sometimes write for the Bishop, was plainly proved from a Letter, directed to one Mr. Dubois, found in the Bishop's House, in which it is expressly said, That He had writ an Answer to a Letter from Mr. Dubois, IN the Hand of Mr. Johnson, which was the Name Mr. Kelly own'd Himself to have assum'd. By what Accident this Letter was not sent, but kept; with the Seal of it broken in the Middle; does not appear: But the Fact is beyond dispute, that such a Letter there was, written in a feign'd odd Hand, with a few peculiar Letters like the Bishop's; and seal'd with the same Seal with That of the Letter which was seiz'd coming from Him at the Tower. That this Letter to Dubois was, in the Bishop's own Opinion, a strong Proof of his making use of Mr. Kelly as an Amanuensis, was put beyond all dispute with me by his own Way of answering to this Allegation; and to the Identity of Seals upon this Letter to Dubois, and upon That from the Tower, which He own'd to be his own Hand-writing. For We see, the Two Questions which pinch Him upon this Part of the Evidence, are these. 1. What Account is to be given of this Letter found in his House, in which Mention is made of his answering (not BY but) IN the Hand

Hand of Mr. Johnson? 2. What Account is to be given of the same Seal being upon a subsequent Letter, acknowledged to be the Bishop's, which was upon *This* to Dubois? To the former Difficulty, No Answer could be got from the Bishop, but, in a high Tone of Voice,—"I know nothing of this Letter. They that found it in my House, can best tell how it came there. Besides, My Accusers have not known what to make of it. By the Committee of the House of Commons, it was supposed to be a Letter TO Me: Now, It is treated as a Letter FROM Me. I know no such Person as Dubois, or any One who went by that Name." Which was the Substance of what He said in his Speech; and afterwards in a more disturb'd Manner, when He had the Liberty to speak again after the Counsel for the Bill had finish'd their Replies. But, How absurd all this is, I need not say; or how little becoming either an honest, or an ingenious Man. What! Ministers—forge a Letter for the Support of an Accusation, and make it so obscure as *This*! and then, direct it to One, by a Name, not mention'd in the whole Correspondence besides! and this, before They had determin'd amongst Themselves, what Interpretation to put upon it! before They had resolved what use to make of it! and then, convey it into his House with the Seal broken! and, all this Time, the Letter not forged either in His or any other Person's proper Hand, throughout the Whole of it; —These are Impossibilities utterly incredible in the Way of Forgery; and utterly destructive to the Cause of Him, who had the Vanity to think to put them upon his Judges. For the Argument returns upon his own Head, unanswerable. If the Ministers did not forge this Letter; (which it is the highest Absurdity to suppose, upon the foregoing Reasons;) then, it was a Letter really found in the Bishop's Possession; (which was likewise proved by the Oaths of Those who seiz'd it;) and, if it was a Letter really found in his Closet, of which He can give no other Account; and a Letter, with some few peculiar literal Resemblances to his own Hand; We are justified in thinking it His own Letter: And, if it be His own Letter, it proves to a Demonstration, that He sometimes sent Letters to his Correspondents, (under Fictitious Names,) IN the Hand-writing of Mr. Kelly, alias Johnson. And consequently, the Three Letters in question being proved to be written by Mr. Kelly, and plainly in the Bishop's Name; *This* will be a great Proof that He was truly Amanuensis to the Bishop in *These*, as He had been in Others before.

The second Difficulty was, What Account could be given of the Identity of Seals upon this Letter taken in his House, and Another acknowledg'd to be his own, seiz'd upon his Servant at the Tower? What Account, do You ask! The same Answer serv'd here too; and it was thought sufficient to cry out, Seals may be forged, to a

great Nicety of Resemblance; and therefore, this Seal upon the last Letter actually was forged in order to make the former Letter appear from the Seal to be the Bishop's own Writing.

Forgery, We see, Ministerial Forgery, is the Darling Topick; and here applied, first to the Letter to Dubois found in the Bishop's House; and then to the Seal being the same with That upon a Letter of his own. *This*, We are now considering: Of which the least I will say is, That He was very unfortunate in this Evasion. I must not tire the Reader with every thing He may find in other Places; but must here refer Him to what Mr. Reeve and Mr. Wearg have judiciously observ'd upon this Subject. I will only here make Two short Observations. The First relates to the Judgment of the Engravers call'd to the Bar. Those of that Profession, who spake of making a perfect Seal from an imperfect broken Impression of a Letter, as a Thing possible; yet Themselves spake with some Diffidence of it, as a Thing hardly possible; very difficult; and sometimes, as next to impossible to be done, so as to deceive a great and skillful Artist. One of the Others, who declared it incredible that the perfect Seal which had been used upon the Letter taken at the Tower, could be form'd from so broken an Impression, as That upon the Letter to Dubois, was tried, by a very great Artist, brought by the adverse Party, who made six Impressions with differing Seals, with all his Dexterity, in order to deceive Him: and, after a careful Examination, He answer'd so exactly, and so truly, that the whole House was really in an Amazement at the Exactness of his Skill. As far therefore as the Judgment of Artists in their own Art is of Moment, it was infinitely more probable, (if not strictly certain) that the latter Seal could not be a Forgery, than the contrary.

But my other Observation is, That the late Bishop Himself utterly destroyed his own Accusation of Forgery, which He would fix either upon the Ministry, or (which is, if possible, more monstrous) upon the Committee of the House of Commons, who had the Letter to Dubois in their Custody, by his own Argument drawn from his Accusers having varied in their Interpretation of this Letter to Dubois. For thus stands the Case. Finding this obscure Letter open, with a broken Seal, in the Bishop's Closet, the Ministers, and the Committee, both thought at first that it was a Letter TO the Bishop; as it was very natural for Them to do. In this Opinion They were, even till after the Report of the H. of Commons was printed. Being of this Opinion, had They been disposed to a Wicked Forgery; They would without doubt have forged something, to have supported their Opinion now printed concerning this Letter; which would have been less liable to Objection, than their varying from that Opinion about it. On the contrary, upon considering the Matter again, and comparing the Seals, They found, from the Similitude of the Impressions, as well as of a few peculiar Letters, that the

the *Two Letters* must both be from the same Person, who own'd the *same Seal*. It was the careful *Observation* of the *Seal*, which made Them alter their *first Conjecture* about the *Letter to Dubois*. This is a natural and a fair *Account*. But for an *Accused Man* to cry out, No. They forged this *Seal* from the *broken Impression*, in order to support an *Opinion*, which *Opinion* They had not in Them; nay, the contrary *Opinion* to which They had declared publicly; and which *Opinion* therefore, They could not be conceived to have, till the *Seal* upon the *Letter* from the *Tower* put it into their Minds, *prepossest* before by that other and *contrary Opinion*—This is *unnatural Nonsense*, and *Self-contradiction*. And therefore, This *Forgery* is an *impossible Supposition*; the mere *Invention* of One who had nothing else to say: And therefore, He, who had nothing else to clear Himself by, but such an *Absurdity* of a *Fiction*, must be the *Writer* of that *Letter to Dubois*: And consequently, used to write to his *Correspondents*, IN the *Hand* of Mr. Kelly, who went by the Name of *Johnson*.

It being then certain, that *Kelly*, a *Nonjuror*, was a particular Acquaintance of the *Bishop's*; that He had formerly written *Letters* from his Mouth; and that these *Three Letters* in question were his *Hand-writing*; Nothing remains but to shew that the late *Bishop of R.* is the Person to whom the fictitious Names of *Jones*, *Illington*, and the Number 1378, agree; and in whom *All* the *Circumstances* in these *Letters* plainly centre; and consequently, that He dictated them, or order'd the writing and sending of them. The several *Particulars* which concur in the proving this, beyond any reasonable Doubt, (and which the Reader will find at length in Mr. *Reeve's Reply*, p. 3, and 4.) may all be collected into this one *Argument*. "Whenever in these *Letters*, and throughout *Kelly's Correspondence*, *Jones*, or *Illington*, is described, as *indisposed*, or in *Pain*; the *Bishop of R.* is proved to be *indisposed*, and in *Pain*: When *Jones*, or *Illington*, is under a *Domestic Affliction*; the *Bishop of R's Wife* is *dangerously ill*: That *Week*, in which *Mrs. Jones* died, in the *Correspondence*; the *same Week* died the *Bishop's Wife* at *Bromley*: Those *several Days*, in which *Jones*, or *Illington*, is in the *Correspondence* said to be *out of Town*; on those *same Days*, the *Bishop of R.* is proved and acknowledged to be *out of Town*: When *Jones*, or *Illington*, is said to be *in Town*; on those very *Days* of the *Month* and *Week*, the *B. of R.* is proved to be *in Town*: When a little *Dog* was sent over from abroad, for *Jones*, or *Illington*; his Name *Harlequin*, and his *Leg* broke in the Journey; at that same time, a *Dog* with that Name, and *Accident*, was sent, and came to Mr. *Kelly*, which He Himself told his Friend *Mrs. Barnes*, (as She profest over and over again, upon *Oath*, was a Present to the *Bishop of R.*; and agreeably to this, the Receipt of the *Dog*, and his *Mischance*, and *Illington's* Concern for it, are express'd in other Parts of *Kelly's Correspondence*: The *Third Letter* was writ in the same Hand,

and sent Abroad at the same time, under Cover to the same Person, with the other *Two*: It describes the Person dictating it, to dictate in *Pain*, and to be under some other *melancholy Circumstances*; it is superscribed To Mr. *Jackson*, One of the Names of the Pretender in *Plunkett's Cypher*, and subscribed by *Figures*, which denote a Person whose Name or Title begins with an *R.* and whom no One can doubt to be the same with *Jones* and *Illington*, as being under the like *Circumstances*, at the same time.—The *Induction* therefore, from all these *Particulars*, is strong.—The Person to whom not only One, but Every One, of these *Circumstances* does, at the same time, exactly agree, must be the Person who dictated these *Letters*. Now the Person in whom they ALL thus agree, is the late *Bishop of Rochester*. And therefore, the late *Bishop of R.* dictated these *Letters* to Mr. *Kelly*; and consequently, is guilty of this *Treasonable Correspondence*." This is the *Argument*, in its several Branches, against Him. And as to these surprising *Circumstances*, which are the great Foundation of it, there is One Thing very remarkable, that He has Himself unhappily own'd that They do ALL so wonderfully concur in Him, as to furnish Him with an *Argument*, that His *Adversaries*, having found out these *Circumstances* of Himself, his Family, and his Journeys, forged a *Correspondence* which was, by Means of these *Circumstances*, to be fixt upon Him. So conscious was He Himself of the Strength of an *Argument* of his Guilt, brought from the Concurrence of so many odd and accidental *Circumstances*. I enter not into the *Weakness* of this *Allegation*, at present. I only now bring it, as an *Acknowledgment*, from his own Mouth, that He is very plainly, and very singularly, pointed out by this *Coincidence* of personal *Circumstances*; upon which is founded (as We shall hereafter see, in Reply to his own *Cavils*, and those of his Counsel,) an *Unanswerable Proof* of his Guilt.

BRITANNICUS.

PAPER VII.

I HAVE stated the Charge against the late *Bishop of Rochester*, and laid before the Reader the great *Argument* upon which it is founded, in the several particular Branches of which it consists. I will now consider what He Himself has alledg'd, to invalidate or weaken that *Argument*. He begins his Defence against the Charge, p. 5. at Bottom, with the Affair of the *Three Letters* of Apr. 20. in this Manner. "That it could not be possible that I dictated these *Letters*, has been made out to your Lordships, by such a Concurrence of Evidence, so clear, full, and legal, as I persuade my self can have left no doubt remaining.—A plain Matter of Fact supported by such Testimony, cannot be overthrown by little Guesles, and consequential Surmises." He goes on to applaud his own Happiness in some peculiar *Circumstances*, which made him capable of performing that

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known Difficulty, of proving a Negative. " His being disabled in his Chamber; his being attended before and after *that Time*, [viz. Apr. 20.] by some of his Servants, and receiving frequent Messages from others——Their agreeing Testimony, that no Stranger came near Him about that Time, and for some time before and after——The Circumstance of the *Westminster-Election* enabled his several Servants to recollect the Time, and to furnish a Proof of his Innocence, and of the *Impossibility* of the contrary." These are very big Words——It is no less, we see, than the *Impossibility* of the Charge, which He maintains; and his Innocence relies upon no weaker a Foundation, than *Matters of Fact*, supported by a surprizing Concurrence of full, legal Evidence: Which, if truly so, I own to be stronger than All Consequential Surmizes, or a Thousand little Guesses; tho' I must beg his Leave to observe, that the Argument of his Guilt is made up, neither of Surmizes, nor Guesses, but of a Number of coincident Circumstances, which (morally speaking) can centre but in One Man; and That One Man, in which they All centre, is Himself: which makes the Proof against Him of the strongest sort, and of quite a different Nature from Surmizes or Guesses.

But let us now examine what He here says; and We shall find that such as was his own State of the Charge, such is his Answer to it: the same Partiality running through both. It pretends not to reach to the True Point: nor indeed does it reach so far as it pretends. For I shall shew, 1. That even according to his own false State of the Charge, and his partial undertaking to answer it, the Evidence of his Servants did not prove the *Impossibility* of the Guilt. And, 2. That much less did Any thing, or Every thing that They said, at all affect the Real Charge made against Him by his Accusers. As to the first; (referring the Reader to the Particulars of his Evidence, as the Counsel for the Bill have collected and answer'd them,) I only make this One Remark. His principal Servant, and All his Servants which He brought, (even to a Stable-Boy, and his Wife's Nurse,) did indeed pretend to swear that He was so ill, and so attended, at and about that Day [Apr. 20.] that neither Mr. Kelly, nor Any One else, could possibly come to Him without their knowing it. That They neither saw, nor heard of, such a Person as Mr. Kelly or Johnson, being with Him, at or about that Day of April. Therefore, He concludes, No such Person was with Him. Now, I say, this will not so much as prove, what He pretends to, the *Impossibility* of Kelly's being with Him, even that very 20th of April, upon which the Letters are dated. For when that principal Servant, and some of the Others, were ask'd, Whether the Apothecary, or the Minister of the Parish, (who They said used sometimes to come to their Lord,) never came, without their seeing Them? Whether They thought, They might not have come to Him, with-

out their Knowledge? They allowed the Possibility of it. They did not pretend to deny, but that Those two Persons might come to Him, even at that Time when He was so ill, and so attended, without their Privy. From whence it follows, that, notwithstanding their Evidence, Mr. Kelly Himself might have been with Him on Apr. 20. without their Knowledge. For if those Two Persons, whose Affairs did not require such Secrecy, might so come to the Bishop; certainly Another Person might come too; and it might be contrived, in a Case which required more Secrecy, that He should do so, notwithstanding any thing They said to the contrary. The late Bishop therefore, might have been content to have put it upon the Improbability of the Thing; and not have boasted of a Demonstration of the Impossibility of a Matter, which his own Evidence own'd in Effect to be possible, after They had sworn it was impossible. And as to that Time, in which the Bishop was so ill at Bromley; it was proved, from the Days and Hours of Mr. Kelly's Absence from his own Lodgings, that He might possibly be with the late Bishop at Bromley; the Distance of which Place from London did not at all make it impracticable.

But this is not the Truth of the Case. The Real Charge was, that the late Bishop dictated those Three Letters: and therefore, in the second Place, supposing it had been proved that the Bishop and Mr. K. had not the Possibility of seeing one another, from the Twelfth of April, to the Twenty-first, [which was the utmost that could be contended for,] yet This would not have given Him the Happiness of proving the Negative He ought to have proved; No, not so much as to a Probability. For the Negative He was to demonstrate, was, that He did not dictate these Letters; that He had not seen Mr. Kelly, in any reasonable Time, in which we could suppose Letters of this Date might have been dictated, in order to have been first put into Cyphers, and then sent away. Now, as to this, It was demonstrated that both the Bishop and Mr. Kelly were in Town the Eleventh and Twelfth of April: and as to the Company which on those Days came to the Bishop, or the Hours on which he came to Town the First of those Days, and left it the Last of them; his faithful Servants could give no manner of Account. Here then is evidently and incontestibly (what was so much demanded) a Day, or Two, found and fixt, on which these Two Persons might easily meet: And this answers very well to the Nature of these Letters, which required some Time to transcribe the Whole, and to put the proper Parts into Cypher; and are not supposed to be hurried away, when the Business of them did not require the greatest haste; nay, perhaps might be delay'd a little, in Expectation of some faithful Hand to carry them over, and only trusted to the Post when that Expectation fail'd. However it was, the Time agrees very well with the Affair. Here then is at once an

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End put to this boasted Concurrence of Evidence; which, at most, proved nothing impossible in their being dictated even upon Apr. 20. but which certainly proved nothing at all against the Probability of their being dictated some Days before That, and particularly Apr. 11, or 12. And the Argument drawn from that Number of Circumstances, which agree All in the late Bishop of R. remains in full Force, notwithstanding the Testimony of his Servants. I never doubted, indeed, it would so appear in the End. And, I confess, I should be in great Pain for all Judgments relating to the Concerns of Humane Society, if it could be otherwise. For if an Argument founded upon such a Number of Coincidencies, which Themselves are Matters of Fact, and not Surmises, could be overturn'd by a Concurrence of other Matters of Fact, attested by full legal Evidence; I should begin to despair of ever arriving at Truth in Humane Affairs; and think the Business of Courts of Justice must come at last to be determin'd by the Cast of Dice, or the drawing of Lots. But the Evidence on the Bishop's Part thus duly consider'd, will confirm and not invalidate, the Proofs upon which the Lords proceeded in their Judgment.

This is not all I have to say. I will go farther to a Third Observation, viz. That, supposing his Servants to have all united in a Testimony much more to his Purpose; yet their Testimony was attended with such Circumstances in their Behaviour, as made it Unworthy of any Credit. I need not here repeat that Contradiction in several of them, who upon Oath first declared that No One could come to Him, without their Privy; and afterwards acknowledg'd that Two particular Persons might have been with Him, unknown to Them. But it will be of Importance to acquaint the Reader with the particular Behaviour of his principal Servant, upon whom He plainly most depended; which is not yet publick, and which most of all convinced me, how prepared He came, and how little Credit was to be given to him.

After he had taken an Oath to speak the Whole Truth, and had been some time at the Bar, rather answering his Master's Questions, than Those of his Judges; a Noble Lord put a Question to Him relating [not to the Letter directed to Dubois, as it is by mistake printed in Mr. Weare's Excellent Reply, p. 21. but] to the Letter written by the Bishop from the Tower, and taken upon that same Servant, as He was carrying it out. The Question, one would have thought, very innocent, and very readily to be answered: for it was only, TO Whom was you order'd by your Lord to carry that Letter? which, it afterwards appear'd, was writ to his Son-in-Law, Mr. Morrice. The Man was pretty ready to speak at first, whilst He imagin'd, or had been taught, that any Evasion or Falshood might pass. And therefore, his first Answer import'd that He did not know To Whom the Letter was to be carried. This brought on a Question, "What! not know? Did your Lord give you Letter to car-

ry, without telling you to whom to carry it?" This was so absurd, it required another Evasion. And then his Answer was, "My Lord gave me the Letter late at Night, with Orders to carry it early the next Morning; and did not then tell Me to whom; but bid me come to Him in the Morning, before I went with it, to know to whom to carry it." This absurd incredible Evasion is alone enough to be charged upon the Servant as Perjury; and to destroy all his Evidence. For can it be believ'd that Any One Master upon Earth ever gave a Servant a Letter over Night, to carry early the next Morning, and bid Him come to Him, in the Morning, for the Direction? If the Master chose to be disturbed in the Morning for a Direction; Would not He have kept the Letter Himself, and bid his Man come to Him early for the Letter itself, and not for the Direction? No One can believe this. Accordingly this Evidence was press'd with this Difficulty; and ask'd whether he did not guess, or imagine within Himself, to whom He was to carry it? and the like.

When these Questions thicken'd, and were urged upon Him, it is impossible to describe the Commotion and Shuffling both of the Servant, who was upon his Oath, and of the Counsel for the Bishop, in order to avoid giving an Answer. Sir C. Phips very unwarily apologiz'd for the Servant's not answering it, from the Right every Witness had to take Care not to accuse or hurt himself. But when he was answer'd by the Lord Chancellor, That this Excuse implied in it an Acknowledgment of the Letter's containing treasonable Matter, or something relating to what was Treason; and supposing it had, that the Servant, not being privy to the Contents of it, had nothing to fear from any Answer He could give; this Excuse was dropt. And the Noble Lord still persisting in his Demand of an Answer to his Question; the Servant was in the utmost Distress what to do, or what to say. He trembled all over. His Countenance was often pale, and then again red; and in this Agony of Soul, in which He was in a Contest between his Oath to speak Truth, and his Desire to avoid what He came prepared to avoid, He frequently turn'd Himself towards his Master, plainly seeking some Intelligence from his Countenance, or his Words. I believe this was so remarkable, that All the Audience was in pain for the poor Man, and pitied One torn to pieces within by such contrary Emotions. The Bishop suffer'd Him to remain in the Crisis of this Misery, in the Sight of so many and great Spectators, for some Minutes; and at last, seeing the Question must unavoidably be answer'd, and that the Servant had not Strength to persist in his first Lie, there was a Scene—which, I own, stir'd up something within Me, more than All that had pass'd—a Scene which, I believe, never before appear'd in any Trial, at any Bar—the Prisoner, the Bishop, I say, stood up Himself, and with a seeming Indignation at the Resolution to have an Answer to the Question, and in a very high Manner, fl

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can't relate it without Uneasiness, He publickly, and in a loud Voice, without a *Blush*, or any Mark of *Shame* upon Him, gave his *Servant* leave to *Speak the Truth*. It could be call'd nothing better than giving Him leave; for the *Man* look'd wishfully upon Him several times for his *Relief* in such *Distress*; and the *Master*, without the *Ceremony* of any other *Apology*, used some such odd Words as *These*, Since it must be so, since an *Answer* is insisted upon, let Them know the *Truth*. The only *Paraphrase* I can put upon the *Action* and *Words* of the *Bishop*, with regard to his *Man*, is this, "You are sworn to speak the *Truth*, and the whole *Truth*. But do not be in haste to regard your *Oath*. Shuffle and evade as long as You can, and forbear to do what You have sworn to do, till I judge it to be unavoidable, and stand up, and give the Sign." A *Behaviour* only befitting One, who had trampled under Foot his own *Oaths* long before this; and had taught Himself, what He was now teaching his *Servant*, to undervalue the most sacred *Ties* of *Religion* and *Society*! Only with this *Difference*, that He had reconciled Himself to *Perjury*, in order to dethrone the *Prince*, He pretended to own; but was now reconciling his *Man* to the same *Crime*, in order to help the *Master*, He profess'd to serve. I confess, I much wonder'd that This *Behaviour* pass'd off with no other sort of Notice, but the private *Astonishment* of Every *Breast* which regarded it. I cannot, for my own Part, call it by a more favourable Name than that of an *Action*, in which a *Contempt* of what is sacred, and a *Countenance* determin'd against *Shame*, discover'd themselves, in *Perfection*; and in which the *Guilt* of Him who acted so, appear'd equally with them both. Nor could I think, I had said enough of it, till I had left this *Mark* of *Infamy* upon it.

But if any thing could still add to your *Wonder*, something is yet behind to do it. For would you believe it? After this *Conduct*; after this *Servant* of his had thus eluded his *Oath*, and shuffled in his *Evidence*; and after He Himself had publickly shewn the *Lords*, before their *Faces*, the Influence He had over this *Evidence*, to keep his Mouth shut, or to open it, as He pleas'd; After this, the *Bishop*, as if nothing of this sort had pass'd, recommended the *Testimony* of this very *Man* to the *House*, as the *Testimony* of the most *Impartial* Person, who had laid his *Evidence* together in the *Tower*, upon the first reading of the *Report*, of his own *Accord*, without having the least *Direction* from his *Master*, and before he let him so much as know that He was capable of serving him so much as He was. Good *Man*! how careful He is, lest there should be the least *Appearance* of that consulting together for his own *Vindication*, which He had a *Right* to, and no One could have blamed Him for! so careful, that because Others could not so well see this, He takes the Pains to observe it Himself! And yet at the same time, how little solicitous not

to appear to direct and instruct, where it was inexcusable to do it! But who indeed, could hear with *Patience* such a *Deceit* attempted to be put upon his *Judges*, after They Themselves had seen this unbiass'd *Servant* at the *Bar*, and been *Eye-and-Ear-Witnesses*, that even when He was upon *Oath*, He had a *Memory*, or no *Memory*, just as his *Lord* thought fit; a *Tongue*, or no *Tongue*, just as his *Master* gave the Word; and that He Himself gave *Demonstration* that He came instructed how far to go, and where to stop; and stood at the *Bar*, influenced, not by his *Oath*, but by his *Lord*. This is no hard *Censure*, but unavoidably arising upon the Face of his own and his *Master's* *Behaviour*: Which at once shews the *Insufficient Folly* of *Low Cunning* in the One, and the *Incredibility* of any *Testimony* from the Other. For to return to the *Point* now before Us,—He, who could permit Himself to answer a *Falseness* to a *Question*, after He had sworn to speak nothing but the *Truth*—He, who could refuse at all to answer to a *Question*, which could bring no criminal Charge against Himself, after He had sworn to speak the whole *Truth*—He, who still persisted in his Silence, till his *Master* openly gave Him leave to speak—This *Man* plainly shew'd that He came prepar'd, and instructed; that He had more *Regard* to his *Master*, than to that *God*, in whose Presence He had sworn.—And therefore, that He was not to be credited in what He said in *Favour* of his *Master*; and that all the *Evidence* He had given upon *Other Points* is so affected by *This*, as to be utterly void of *Credit*, as far as this *principal* *Servant* and *principal* *Evidence* is concern'd. This was what I intended; to prove the little *Credit* due to the *Testimony* (so much magnified) of the *Bishop's* *Servants*, and of his *Chief* *Servant* in particular. But as the *Man* was but *Partaker* in his *Master's* *Crime*, by being directed by Him in his *Evidence*; I could not shew what I design'd, relating to the *Servant*, without detecting the *Management*, the inexcusable *Management*, of his *Master* also; and without exposing what must raise the *Inward* *Resentment* of All who know what *Piety*, *Honour*, *Innocence*, and *True Wisdom*, mean.

BRITANNICUS.

PAPER VIII.

I HAVE already answer'd the late *Bishop's* *Demonstration* (as He calls it) of the *Impossibility* of his having dictated the *Three Letters* dated *Apr. 20.* by shewing plainly, that his *Servants* said nothing which (being allowed to be true) could prove That pretended *Impossibility*: and that, supposing They had, They gave too full a *Demonstration* of *Their* own *Prevarication*, to be credited in any *Testimony* to His *Innocence*.

After the *Affair* of these *Three Letters*, He comes, p. 6. at *Bottom*, to the *Letter* to *Dubois*, found in his own *House*; but says little to it here, because the *Counsel* for the *Bill* had not then

then open'd their whole *Argument* upon it. I have, in a *Paper* before, consider'd this *Letter*, as one *Foundation* of the main *Argument* of his *Guilt*; and have, under that *View*, stated the *Matter*, as it was fully handled; and answer'd all his *Objections*; both *Those* which appear in his *printed Speech*, and *Those* which He urged, after the *Replies* of the *Counsel* for the *Bill*: and therefore, referring the *Reader* back to that *Paper*, shall say no more upon it now, but that it still remains a *Letter*, by all the *Circumstances* of it, fixt upon Him; and a *Letter*, which at least shews that He used to write to his *Correspondents* IN the *Hand* of Mr. *Kelly*: which both He and Mr. *K.* absolutely denied.

We come now to a *Fifth Letter*, p. 7. viz. the *Letter* writ by the *Bishop*, from the *Tower*, and taken upon his *Servant*; and acknowledg'd by Himself to be his own *Hand-writing*. I did not mention this *Letter* in the *State* of the *Main Argument* against Him, because I thought it would come in most properly as a *Corroborating Circumstance* of *That Guilt*, the *Proof* of which relies chiefly upon the *Proof* of his having dictated *Those Three Letters*. For, as I would do Him all the *Justice* in the *World*, I must own that this *Letter* from the *Tower* is no manner of *Proof* (strictly speaking) of the particular *Guilt* laid to his *Charge*; it having no relation to those *Three Letters*, which contain his *Treason*, or to *Any One* of them; or to *Any* of those *Circumstances*, which help to fix them upon Him. But, I must likewise observe, on the other *Hand*, That this *Letter* is an undeniable and a most convincing *Evidence* of his *Guilt* in *general*; of his being conscious to Himself of his own *Treason*; and of his *Fear* that something or other was discover'd to his *Disadvantage*. Upon this *Account*, it is justly urged in this *Cause*: and may properly be alledged, as an *Argument* against Him, That, at the same time, that a *Number* of odd, accidental *Circumstances* concur to prove those *Three Treasonable Letters* to be dictated by Him; there is a *Letter* seiz'd under his own *Hand*, which plainly betrays Him to be sensible of his own *Danger*, and inwardly conscious of that sort of *Guilt* which was laid to his *Charge*. Nor do I wonder that, when He comes to speak upon this *Subject*, He is so very remarkably short in what He says. This itself is an additional *Proof* of what I am urging. All that He allows Himself to say about it is, That it was writ to his *Son-in-Law*, which makes it not stand in need of farther *Explication*; that it was writ in *Answer* to a *Letter* of his, which was the *Reason* of not mentioning the *Names* of *Those* (as not able to hurt Him) who were not mention'd in the *Letter* to which it answers; that Mr. *Reeve* had mistaken the *Sense* of *One Passage* in it: and then He leaves it to itself, without any more of his *Explanations*, or *Apologies*. No wonder, I say, He is afraid of *That Subject*, which, the more He had stir'd it, would the more have confounded Him. For it is not upon *One Sentence* of it, whether

rightly or wrongly understood, that the *Argument* against the *Writer* was form'd; but upon the *Whole Frame* and *Tenor* of that *Letter*; which could no more come from an *Innocent Man*, than the grossest *Treason* itself.

It is a very judicious and just *Observation*, which has been made upon that *Passage* of it, in which the late *Bishop* tells his *Friends*, that neither *Layer*, *Sample*, nor *Neynoe*, could affect Him; viz. That an *Innocent Man* could not have writ thus, but must have express'd Himself more largely, That let the *Light* which the *Administration* had into the *Plot* come from *Whomsoever* it would, and under whatsoever *Names*, it could not affect Him; because He was totally *Innocent*; and therefore, not only that *Layer*, *Sample*, and *Neynoe*, could not affect Him: but that *All* the *Persons* in the *World*, put together, could not affect Him, who was clear of *Every Degree* of *Guilt*. But because an *Evasion* may be found by *Wit* and *Cunning* for every *Thing*; and He may say, that He meant that, *Even* supposing it all a *Forgery*, if those *Names* only were to be made use of against Him, He could the more easily shew the *Forgery*, because they were *Names* of *Persons* with whom He could prove that He never had the least *Acquaintance* or *Correspondence*: Whereas, if They had pitch'd upon *Others* that happen'd to be his *Acquaintance*, and should produce *These*, it would be something harder to ward against the *Attack*, tho' it were all *Forgery*, &c. I say, Because this weak *Insufficient Evasion* may possibly be made use of, to interpret that *Passage*; and because some *Inadvertent Readers* may think such *Evasions* to be a *Justification* of that *Letter*; I shall therefore state the *Argument* drawn from the *Whole Tenor* of it, before I go on to other *Parts* of his *Defence*. And in judging of it, let *Any One* of *Common Sense*, put Himself in the *Circumstances* of the *Prisoner* at that *Time*;—I desire no more.

The late *Bishop* was then in the *Tower* for *High-Treason*. He knew the *Crime* laid to his *Charge* by *Those* in the *Administration*; tho' He did not know what *particular Proofs* of that *Charge* They had in their *Possession*. He could not but consider Himself, as a *Person*, in such *Circumstances*, standing in need of the *Assistance* of his *Friends*. In this *Condition* He writes a *Letter* (not only, or principally, for the *Use* of the *Person* it was sent to, but) to engage and to direct the hearty *Assistance* of all his *Friends*. How therefore, upon such an *Occasion*, would an *Innocent Man* have express'd Himself? Can it be possibly supposed, that an *Innocent Man*, in this *Condition*, would not so much as once, throughout a very long *Letter*, have supported the *Spirits* of his *Friends*, by a solemn *Assurance* of his own *Intire Innocence*? Not once have declared his utter *Guiltlessness* of all *Treason*? Not once have mention'd the *Word Innocence* on his own *Part*, or *Wicked Forgery* on the *Part* of his *Enemies*? Or, not once have beg'd their *Assistance* against a *Fictitious Charge*, and an *Invented*

Accusation? But let us see how He chuses to make his Application. Just the contrary Way. He speaks in the *Stile* of a *Man*, against whom *something* may be alledg'd; of a *Man*, who thinks no *Legal Evidence*, in *Westminster-Hall*, or *Regular Impeachment*, can be produced; who is engaged in some *Cause*, for which his *Friends* have a *Zeal*; of *One*, against whom some particular Persons could not furnish Evidence; of *One*, who has nothing to fear but in some *less Ordinary Way* of Proceeding; Every Article of which implies in it *Guilt*; that there might be *some Evidence* against Him, tho' not what is required in *Westminster-Hall*; that the *Testimony* of *Others* might hurt Him, tho' that of *Sample*, *Layer*, or *Neynoe*, could not. This is the more remarkable, compar'd with his *Behaviour* afterwards. In his *Speech* at the *Bar* of the *House of Lords*, when all other *Defences* fail'd, He does at last speak (tho' something faintly) of his *Innocence*; as all *Criminals* do at every *Bar*. But in his *private Letter*, where the *Real Thoughts* of his Heart are to be laid open to his *Trusty Friends*, the Word *Innocence* is solicitously avoided. Follow Him to the *Bar* of the *House*, and there you will find Him, when He saw all other *Replies* out of his Reach; delighting perpetually to have Recourse to the *Darling Topick* of *Forgery*, and *Invention*. Every thing that pointed Him out, and set Him in so strong a Light, that All the World saw Him plainly to be the Man, was there pronounced to be *Forgery*, and *Ministerial Contrivance*. But look upon Him, in his *Letter*, before He knew the Strength of his *Accusers*; see Him in those *Transcripts* of his retir'd Inward Thoughts, which he was sending his *Friends* for their *Direction* in his *Distress*; and there is not a Word of *Forgery* or *Invention*; no *Accusation* of the *Ministers* for any *Design* of his *Ruin*, without *Guilt* or *Evidence*; not so much as *One Insinuation* of any *Contrived Plot* against Him. It is to little Purpose to enlarge farther. Let the greatest Friend He has Now in the World, (and I am sensible, He has more Now, than ever He had through his whole Life,) put Himself in these *Circumstances*, in a *Prison*, under the *Charge* of *High-Treason*, writing a long *Letter* to his *Friends*, by *Stealth*; and let Him lay his Hand upon his Heart, and say, Whether it would have been possible for Him, in the Nature of the Thing, supposing Himself intirely innocent, to have written this *Letter* in such Terms, as to avoid the least *Insinuation* of his own *Guiltlessness*, or of the *Forgery* of his *Accusers*; much more, to have dropt several Expressions, which plainly imply *some Guilt*, and *some sort of Evidence*, somewhere or other, of that *Guilt*? I dare say, there is not a *Man*, of All Those, who in *Either House* voted against the *Bill* which affects the late *Bishop*, who, considering this *Letter* in all its *Circumstances*, could believe it could possibly come from an *Innocent Man*; at the same time that They might think fit, upon some other Accounts, to vote against

that *Bill*. Thus much I thought proper here to say, about this *Letter*; in order to shew plainly that the *Person* who wrote It, in such a Manner, in such *Circumstances*, was certainly, in *some Instance* or other, *Guilty of that Treason*, which He knew at that Time to be laid to his Charge.

After the late *Bishop* has buried this *Letter* in as deep *Silence* as He could, He comes, p. 7. to speak to Those *Letters* from *Abroad*, which were receiv'd here, in Answer to those of April 20. Which is indeed a *Circumstance* too pressing, and too keen, for Him to dwell upon. And therefore, He wisely flies from it, as fast as the Volubility of his *Wit* and *Tongue* can well carry Him. It is enough for Him, when He is pinch'd with such a *Difficulty*, How came *Such Answers* from *abroad*, to the *Letters* from hence, if those *Letters* were not really sent by the late *Bishop*?—It is enough, I say, for so great a Man, to cry out, as He does here, "Any Man that pleases, may write to Me, and take those Names upon Him. I did not receive them.—The Letter from *Motfield*, May 11. cannot be thought writ with any other View, than that of being intercepted, and of fixing upon Me that of April 20. Then He goes on to talk of *Malicious Disguises*, and the *Injustice* of making Him answerable for *Letters*, which have been banded to and fro between Two unknown Correspondents, on a Design to raise a *Suspicion* of a *Third Person*, altogether a Stranger to what is writ.—The *Letter* here mention'd is indeed a remarkable One. It was under Cover of *One* to *Another Person*. It is directed to Mr. *Illington*. It shews *Musgrave* to be the same with *Motfield*; and, from a *Scotticism* in the *Stile*, to be writ by a *North-Briton*, as the late Lord *Mar* is. It shews *Illington* to be the *Person* who wrote to *Musgrave*, Apr. 20. It shews Him to be a *Clergyman*, and *One* who had a Loss in his *Family* a few Days after Apr. 20; and *One*, who was under a painful *Distemper* Himself; and *One*, who had promised *Motfield* to be reconcil'd, and to act again, with a certain *Third Person*, &c. These are such convincing *Circumstances*, that the *Bishop* could not forbear to acknowledge, They point Him out very plainly. He has therefore, no Refuge left but this, That the *Ministers* contrived that this *Letter* should be writ, as in Answer to *Another*, which They had forged before; and that this Answer should be first sent to *France*, and from *France* back to *England* by the *Common Post*, in order to be intercepted at our *Post-Office* here, and to fix the Name and Letter of *Illington*, upon an *Innocent harmless Prelate*. What a *Difficulty* must such a Refuge as this bring upon the Cause of an *Accused Person*? For He, who dares to lay such a Crime as This, to the Charge of *Ministers*, must first suppose All Persons concern'd ready to think Them *Wicked enough* to attempt it; and not only this, but He must convince Them likewise, that the *Ministers* really thought such *Inexcusable Attempts* so much worth their while, as to hazard their own *Safety*, (I may say, their own *Lives*;) for such a *Forgery*: and after all,

(which

(which is still as difficult,) He that ventures at such a Scandal as *This*, ought to be prepared with full Evidence, That All other Circumstances, which concur in the Proof of his Guilt, were likewise contrived, invented, and forged, to coincide exactly with this Letter, in pointing out Him for the Guilt They had devised to fix upon Him. For He must not think, His Affirmation can be taken for Evidence of the highest Improbability, or of a Moral Impossibility. Forgery is, in its Nature, inconsistent with itself; and full of Flaws, whenever it runs into a Number of Circumstances. And Innocence can find Ways to discover, and make them as evident as the Light. But when a Criminal is encompassed with a Multitude of Glaring Circumstances, which shew Him to every Eye in the principal Point of Light; when a great Number of Particulars centre in Him, and Him only; for Him to avoid the Force of All, by saying of Every One, as He meets it, — A Forgery, A Contrivance of Great Men! — The plain Meaning of *This* can be nothing, in other Words, but that He had no other Answer to make; and therefore, had Recourse to this Low, Poor, Improbable, Impossible Evasion. For He, who can believe the Letter now before Us forged and sent abroad, to be intercepted afterwards at home, must believe ALL the Other Circumstances, so nearly affecting the late Bishop, forged also: and He, who can believe *This*, may believe, if He pleases, that *Falshood* and *Truth* have the same Marks upon them; and that *Guilt* and *Innocence* are in one and the same defenceless miserable Condition.

BRITANNICUS.

P A P E R IX.

THE late Bishop of Rochester, in the Prosecution of his Direct Defence of Himself, against the Charge of his Accusers, after having alledg'd what I have already consider'd about the Treasonable Correspondence by Letters, comes next to the remarkable Circumstance of the Dog, which I have made one Support of the Main Argument against Him. It stands thus. A little Dog is said, in One of the Letters to Hatfield from abroad, to be sent, with Orders to be deliver'd to Him [Hatfield.] Accordingly, a Dog comes to Kelly, with an Accident of a broken Leg. Kelly gives it to Mrs. Barnes, to look after it, till it is cured. She is in hopes it is for Herself, according to a former Promise. But He tells Her, there is Another coming from Paris, which He designs for Her; but that *This* was sent to Him, to deliver as a Present to the B. of R. *This* was deliberately repeated, and attested upon Oath, by Mrs. Barnes, whom neither Mr. Kelly, nor the Bishop, ever pretended (nor I believe dared) to tax with Corruption or Perjury. The Conclusion from this is, that (as Hatfield in the Correspondence was Kelly, so) Jones and Illington, to whom the Dog was sent, were Names for the Bishop of Rochester.

The late Bishop's Answer to this is, 1. An

Affirmation of a Fact, directly contrary to what appear'd at the Bar. As to "Mrs. Barnes, (says He,) She varies; and sometimes the Dog is for Me, and sometimes for Her." Whereas She constantly, without Variation, affirm'd, (and made an Apology for speaking Truth, from her being then under the Awe of an Oath,) that *This Dog* in Question, deliver'd to Her by Mr. K. with his Leg broke, was deliver'd to be cured, in order to be then presented to the Bishop of R. and that besides *This*, there was Another Dog to come for Herself. It looks like too much Guilt, after this, for the late Bishop, instead of answering to what she said, or charging Her with Subornation or Perjury, as He did Others; so grossly to misrepresent and falsify what she swore.

2. Another Answer is the Universal Remedy against all Attacks; and that is Forgery. It is called an Intercepted Dog, by way of Ridicule; and said to be design'd to fix the Names of Jones and Illington upon Him. How low does Guilt sometimes stoop, and all only to make itself more manifest? And indeed, If Guilt did not blind the Eyes, how could a Man of such Penetration lay Himself thus open, by such Absurdities? For when We come to enquire into the Matter, We shall find that the Ministers neither intercepted, nor seiz'd, any such Dog; nor perhaps thought of the Mention of a Dog, in the Intercepted Letters, any otherwise, than as of a Cant-Expression to signify something else; till Mrs. Barnes, being examin'd before the Counsel, gave an Account of a Dog in her Custody, design'd for the Bishop of Rochester. This therefore, join'd with the remarkable Circumstance that He never dared to insinuate a Word against Mrs. Barnes's Credibility, is a Demonstration that the Machine of the Dog was no Invention of Those in the Administration, but a Reality discover'd to Them very naturally. But let Us take it in his own Way; that this very Dog, which did come, was the Dog mention'd afterwards by the Surgeon, which never came; and that it was for Mrs. Barnes; and that She merely by Chance, unthinkingly, and falsely, brought the Bishop's Name into this Affair: Where still is the Forgery? Or how can this be call'd a Contrivance of an Intercepted Dog? Supposing the Ministers deceiv'd by Mrs. Barnes's solemn Attestation; yet, in *This* They must be free from all Design'd Malice, or Wicked Invention of their own. The Whole of their Crime must have been, their believing Her upon Oath, whom Mr. Kelly Himself contends, upon another Occasion, to be a Person worthy of all Credit; and their farther tracing out the Person meant by Jones and Illington from this Circumstance so attested.

But all the Strength of the Defence, I suppose, lies in this, That the Ministers, knowing by this Means of a Dog, framed subsequent Letters so, as to speak of that Dog in such Terms, as to fix it upon Jones and Illington, under which Names they had before forged other Letters with Design to fix them upon the late Bishop. Im-

comparable

comparable Sagacity! Were it not that *Facts* and *Dates*, (besides *Probabilities* in the highest degree,) stand against it, and destroy it. Had these *Letters*, in which the *Dog* is mention'd, been written AFTER Mrs. Barnes had declar'd the *Dog* to be design'd for the late *Bishop*, there would have been a *Possibility* of the *Truth* of what is here alledg'd; tho' only a bare natural *Possibility*, against *All Moral Evidence*. But it so happens that these *Letters*, relating to the *Dog*, were all writ, and intercepted, and in the *Hands* of the *Ministry*, BEFORE Mrs. Barnes had given *Testimony* about the *Dog*. It was on May 23. that She gave her *Testimony* of the *Dog's* being design'd for the *Bishop* of R. And the last of the *Letters*, relating to the *Dog*, bears Date May 7. So that She was examin'd about a *Dog*, because a *Dog* was found mention'd in the *Correspondence*; and not the *Dog* put into the *Correspondence*, because She had fixt it upon the *Bishop*. Either therefore, He must say that Mrs. Barnes was his *Enemy*, and in the *Plot* against Him, and before *Instructed* by the *Ministers* to lie and perjure Herself, in order to fix the Names of *Jones* and *Illington* (which she knew nothing of) upon Him; or He must acknowledge that there can be *No Forgery* in this Case. But neither He nor Mr. Kelly appear'd the least willing to represent Her under such a *Character*, but the contrary. Therefore, There could be *No Forgery* in this Instance: and therefore, the *Circumstance* of this *Dog* lies still *strongly* and *unanswerably* against Him, and fixes the Names of *Jones* and *Illington* inseparably to Him. And indeed, He Himself (so forgetful is *Invention* of its own Concerns) destroys his own Allegation. "The *Surgeon* (says He,) and Mr. Kelly, only "knew any thing of this Matter, and They "can best clear it." If this be so, We have Mr. Kelly's *Testimony*, who assured Mrs. B. that this *Dog* was for the *Bishop*. And as to the *Surgeon*; his *Two Papers* contradict one another; but Neither of them contradict the *Testimony* of Mrs. B. because They plainly relate to *Another Dog* design'd for Her. So that Her *Account* of the *Two Dogs* remains in full Force, a compleat *Vindication* from the Charge of *Ministerial Forgery*.

3. He has *Another Argument* against the Use made of the *Letters* relating to this *Dog*, taken from That of May 7. in which it is said, "Mrs. Illington is in great *Tribulation* for poor "Harlequin—but His *Obligations* are never "the less: Which (says He) being *Five Days* after the *Burial* of my *Wife*, cannot mean Her; "and being but *Five Days* after, can as little "mean Me." From whence He argues, that the *Writer* must be *One*, who knew little of his *Family-Affairs*, but blunder'd in the midst of his *Bad Design*; and said an unnatural Thing, which could not be true of his *Wife*, or of Himself. Of his *Wife*, without doubt it could not, because She was dead at that Time; and therefore could be in no *Tribulation*. But of Himself, (first called Mrs. Illington, and then He,)

it might be said, by a *Third Person* writing in return to the Sender of the Present, notwithstanding this *Argument*. And I am the rather inclined to think it true, because of the *little Artifice* here made use of in the *Expression*. For observe, His Words are, *But Five Days* after the *BURIAL*, (not, after the *DEATH*,) of my *Wife*. If He had made use of this latter Word, (which was so natural in this Case, that nothing but *some Design* could throw the other in his Way,) He must have said, *Eleven Days*; and then it would not have appear'd so astonishing, that a *Person*, to whom a *Present* had been sent from very considerable Hands abroad, should *Eleven Days* after the *Death* of his *Wife*, express to a particular Friend some Concern for an unfortunate Accident to such a *Present*; and permit Him to make that Complement in his own Way. The *Death* of a *Friend* is the *Time*, from whence Men date the *Violence* of their *Grief*: and when, instead of *That*, so Ingenious a Man dates his from the Day of a *Wife's Burial*, and not of her *Death*, I suspect it is to cover the *Six preceding Days*, which, when added to the *Other Five*, might not have sounded so well in his *Argument*: And then I can't help thinking that He, who can descend to such an Instance of *Art*, stands in need of it; and that He, who stands in need of it, has some *Guilt* to cover by it. The same *Correspondence* represents Him, as very well disposed for *Action*, and only waiting (not till the *Excess* of *Real Grief* shall have spent itself, but) till the *Days of Mourning* are over: and the same *Letter* speaks of Mr. Jones, as come to Town: which was true of the *Bishop* of R. What Room for the Charge of *Forgery*, in such a Number of *Circumstances* morally impossible to be forged, let every Man of *Common Sense* judge.

And upon the Whole, If what the late *Bishop* wittily observes be true, That "They are "not much in the wrong, who think *One Intercepted Dog* of as much Use, as *Ten Intercepted Letters*;" He must be content with the *Argument* of his *Guilt*, drawn from a *Dog*, fixt upon Him, not by the *Invention* of his *Enemies*, but the express *Testimony* of his *Friends*; and this strengthen'd by a Manner of treating such an *Allegation*, on his own Part, which shews he was conscious of the *Impossibility* of giving a plain Answer to it. I have been the longer upon this *Circumstance* of the *Dog*, because it has not, I think, been so handled already, as to give a particular Reply to His *Cavils* against it.

The next Page (9.) contains first the *Old Insinuation*, that it was an easy Matter for his *Enemies* to get an Account of his *Motions* to and from *Bromley*, and to make the *Correspondence* answer to those Accounts: Which is again an *Acknowledgment*, that if the *Treasonable Correspondence* be not forged, (which no One in his Senses can believe it to be,) He is pointed out in it too plainly to be hid. After this, He comes to an *Acknowledgment* of his Acquaintance with

with Kelly; and then endeavours to prove, it can't be very particular, from the Evidence of (not all, but) almost all his Servants, who knew Him not either by Face or Name: Whereas the Nature of their Correspondence together was such, that it made it necessary for Him to be known, or seen, by as Few of the Servants as possible; and therefore, This Argument rather proves a secret Intimacy, than the contrary. But of this I have said enough some Time ago. After this, follows a Remark about Legal and Reasonable Evidence; which will come to be consider'd in a more proper Place.

The whole Tenth Page, with Part of the Eleventh, is taken up in an Insinuation, as if what Neynoe had reported, as said to Him by Kelly, was the main Strength of the Charge against Him; in Satire upon Hearsay Evidence; and in lessening Neynoe's Character, and Testimony; and some Severity upon Those who receiv'd it. It would be unpardonable to tire the Reader with Repetition. I have handled the Affair of Neynoe, and his Evidence, at full Length, in the Observations upon Kelly's Speech: and thither I refer the Reader. I only say here, that it is a gross unworthy Behaviour in the late Bishop, to insinuate as if the Hearsay Evidence of Neynoe were the Strength of the Charge against Him, when he felt the Weight of such a Number of Concurring Positive Circumstances, too strong for Him to elude; and the Force of that Argument, which I laid before the Reader at the opening of this Part of the Cause; and that I have long ago stated all the Circumstances of Neynoe, and the Degree of Credibility of his Evidence, and the Conduct of that Great Minister, here struck at, with relation to Neynoe, so as to put this Part of the Cause far out of the Reach of these Low and Bitter Reflections:—which nothing can justify; and which Guilt alone could make necessary to Him who so freely made use of them.

From this, He wanders to the Report of the House of Commons. But because He fixes his Observation here, upon a Letter which made Part of the Charge against Him in Both Houses; I shall stay to take Notice of it, tho' it is only design'd to invalidate a particular Interpretation of One Passage in it; which Interpretation was not at all insisted on, as a Part of that Charge. So that, whether the Meaning put upon the Expression in the Letter be right or wrong; it will be of small Importance to his Cause. The Passage is in the Letter of Apr. 20. to Jackson, in which the Writer expresses Himself thus, "Notwithstanding this Opportunity is elapsed, I agree with you, Another may offer before the End of the Year, tho' not perhaps every way so favourable.—" The Interpretation put upon it by the Committee is, that the Opportunity elapsed signifies the Time of the last Elections of Parliament-Men, &c. His Argument to prove this impossible to be the Meaning of it, is this, "That this Passage being supposed to be writ Apr. 20. and in Answer to a Letter from the Pretender at Rome; and that Letter found-

ed upon Intelligence from hence; the Distance from hence to Rome is so great, that the previous Intelligence sent to Rome, which occasion'd the Letter to which this was an Answer, must have been sent Two Months before Apr. 20. That Two Months before Apr. 20. the Elections were not so much as begun. And therefore, No Such Expression could then be used by One at Rome, that an Opportunity was elapsed, which He must know was not yet come, when He heard last from England." But it is very easy to give an Answer to this Imaginary Demonstration: and an Answer fully sufficient to destroy the Force of it. For, the Intelligence given to the Pretender from hence, might very probably relate only to the Resolution taken by his Friends here, viz. That it being proposed to make the first Attack at the Time of the Elections, it was by Many not thought proper, and so the Design put off to Another Opportunity. Upon this, the Pretender may naturally answer, that tho' this Opportunity of the Elections should be thought improper, and so elapse; yet Another might afterwards offer itself for their Purpose, before the End of the Summer. Thus He might express Himself, before He could know that the Elections were actually over. And his Correspondent, answering Him Apr. 20. when that Opportunity was actually over, could not use the same Expression; but would naturally speak of it then, as a Matter actually over. Notwithstanding this Opportunity IS ELAPSED, must be his Style, after the Elections were over; and yet it might certainly be in Answer to One, who had only spoke in his Letter from Rome, upon the Intelligence He had receiv'd, That the Design was not to be executed at the Time of the Elections. Nay, This very Expression in the Letter of Apr. 20. might be used, in Answer to One, who had received no Intelligence from hence; but only had writ his Opinion concerning the several Opportunities which might offer; and that if the first (viz. That of the Elections) should not be judg'd proper, Another might soon offer itself. There is no manner of Incongruity in a Person's answering thus, Apr. 20. and speaking of the Opportunity of the Elections as over; and agreeing that Another may offer, &c. And therefore, not the least Shadow of an Argument from hence, to shew that the Interpretation put upon that Passage was not natural and true. These Observations are fully sufficient, in Reply to this Argument of the Bishop's, upon which He seems much to rely.

We are now come to an End of what I call his Direct Defence of Himself from the Charge against Him. We shall next come to the Indirect Part of his Defence, taken from a Multitude of Improbabilities heap'd together: and shall soon finish what remains. BRITANNICUS.

P A P E R X.

THE Fifth Part of the late Bishop of Rochester's Defence, is taken from a Number of Improbabilities heap'd together; and extends itself thro'

thro' Pages 12, 13. And this Part, tho' it was not of Importance enough to be particularly consider'd by the Counsel for the Bill, whose chief Business it was to urge the *Direct Proofs* against Him, and to Reply to his Answers to Them; yet deserves some Notice: because, on One Side, a good deal of Strefs seems to be laid upon it; and on the Other, I think it naturally tends very much to the Justification of Those who condemn'd Him.

I will begin with observing, that when a Man of a great Capacity leaves the *Direct Part* of his Defence, in *Obscurity* and *Confusion*; and turns the Bent and Force of his Abilities to *Topicks*, which neither the Charge against Him, nor the Manner of prosecuting it, gave Him the least Pretence to mention: it is a certain Sign that there was something too hard for Him in the One; and that He took Refuge in the Other, because it was a more copious Subject for his Invention, and a more unconfined Field for his Self-Love and his Oratory to display themselves in. I know the Pretence which He would willingly insinuate, that, being attack'd only by what He sometimes calls *Conjectures*, sometimes *Surmizes*, and sometimes *Probabilities*; He has a Right to set *Probabilities* on One Side, against *Probabilities* on the Other. And if this be a true and just Representation; it is past all doubt that He has this Right, and does well in making use of it. But then, He must take Care that the *Probabilities* which He alleges for Himself, be of the same sort with those all'dg'd against Him; and particularly, that They touch the *Facts* charg'd upon Him, as nearly as Those, to which He opposes them: which We shall see not to be at all regarded by Him in this Part of his Defence.

But indeed, this Way of representing the Case, is utterly groundless; not to say, shameless. For all who wish well to the Concerns of *Humane Society*, ought carefully to keep up a Distinction between the Force of a Number of Concurring Circumstances; all centring in One Point, and all marking out One particular Person; and the Weakness of a Parcel of Loose Probabilities, taken from Circumstances that do not affect the Point in hand. If the former are to be call'd *Probabilities*, in Distinction to the Evidences of our Senses, (in which *Themselves* there is the bare Possibility of Error,) yet They are always to be look'd upon, as those *High Probabilities*, which create that *Moral Certainty*, or *Moral Evidence*, which is the Guide of Courts of Justice; and with which, if it be once taken away as Insufficient, all Hope of Justice in the Affairs of *Humane Society* must be taken away at the same time. They are indeed the only Foundation of that *Moral Certainty*, upon which the greatest Part of *Humane Affairs*, even of the Highest Nature, are, and must ever be, transacted. And He, who opposes to These a Catalogue of Loose Probabilities, all general, and all void of the least particular Relation to the Point in hand; not only trifles in his own Cause, but does what in

Him lies to destroy the Cause of *Humane Justice*, whilst He attempts to invalidate the great Foundations of it, by comparing Them with something which bears no sort of Likeness or Proportion to them.

I will not instance here only in the Case of *Treason*, in which it is absolutely impossible to preserve any State, if a Number of Circumstances which come close to a Person and a Fact, shall ever come to be call'd *Surmizes*, and to be outweigh'd by a Number of Circumstances of quite another sort, which have no such Respect to the Charge in question. But I will add the Case of *Wilful Murther*; which could very seldom (perhaps never) be punish'd, if that *Moral Evidence* of *Concurrent Circumstances*, pointing out the Murther, and the Murtherer, could be overballanced by Any Circumstances which do not nearly affect the same particular Fact. For, supposing the Case of a *Wilful Murther*, carried on as darkly as *Conspiracies* generally are; and that, by some Discoveries it were plain that this Murther was committed by One who went by the Name of Jones—who was in Town such and such particular Days, and out of Town on other particular Days—who was laid up with a painful Distemper at such a Time—whose Wife was dangerously sick on such a Day, and died in such a Week—who had a Dog presented to Him, which Dog was named *Harlequin*, and had his Leg broke in his Journey; or the like: And supposing, a Person was apprehended, and brought upon his Trial, in whom All these Marks united; and from whom a private Letter had been intercepted, with some Signs of a Consciousness of Guilt in it—Does Any One imagine, that his Judge would think it tolerable for Him to treat These Particulars as *Surmizes*; or permit Him to set against These, a Chain of *General Improbabilities*; and to plead in this Strain,—“ My Lord, Is it probable that I should be the Man? I had a good Education—I have a Family to look after—I was brought up to an honest Trade—I have been known Thirty Years ago to speak with Abhorrence of such Vices—I must have been infatuated, to have been guilty of such a Crime, to the Ruin of Myself and my Family; and yet I never pass'd for a Madman—If a Criminal should pretend to urge and insist upon such Vain Empty Allegations, He would, I doubt not, be told, That These do not touch the Point in hand; That his Business is to bring Proofs that those Circumstances do not centre in Him; and that No Circumstances can be of any Force, but such as directly ward off the present Charge, by destroying those other Circumstances which are those Proofs of it, upon which the Court must frame their Judgment. I have thought fit to say thus much; that such *Moral Evidence* as is sufficient to remove all Doubt, which is the Foundation of almost all Social Actions in Humane Life, and the Guard of *Humane Society*, may not be ill-spoken of, and put into the Rank of *General Circumstances*, which satisfy the Mind in nothing particular,

particular, and can be the Ground of no Judgment against any *Special Charge*. And having now premised this, I shall take a *View* of the particular *Case* before Us, and of the particular *Probabilities*, urged by the late *Bishop* in his own *Defence*.

Only before I do it, I shall beg the *Reader* to stop a little, and imagine within Himself what it is he would naturally expect in this Place. Here is a *Clergyman*, a *Bishop*, before his *Judges*, under the Accusation of particular *Acts of Treason*. He undertakes to shew the highest *Improbability* of his being guilty of what is laid to his *Charge*. Would not One presently expect Him, in such Circumstances, urging his *Judges* with such an *Argument* as this—"Is it at all *credible*; Is it at all *probable*, that I, who am, and have long been, a *Preacher of Simplicity and Truth to Others*; that I, who have taught *Others* the *Sacredness* of an *Oath*, should in Myself shew Them the Example of an *Impious Breach* of it." This would have sounded well, if He could with Confidence have appeal'd to his *Practice*; and have gone on thus—"My Lords, I have taken a *solemn Oath* to be faithful to K. George. I have abjur'd the *Pretender*. My *Conduct* has been always full of a *Zeal* for the *Former*, and against the *Latter*. I have ever shewn by my *Behaviour*, as well in the *Critical Time* of the *Late Rebellion*, as upon all other *Occasions*, that my *Heart* went along with my *Lips*; and that I have acted Myself, and animated *Others* to act, with an inflexible *Duty* to the *King* I have sworn to, and in a warm *Opposition* to Him I have *abjured*. The *Conversation* I have most entertain'd, the *Company* I have kept, are *Proofs* of the same *Fidelity* to K. George. And is it *probable*, or *credible*, that after *Years* spent in his faithful *Services*, I should at last, on a sudden, turn an *Enemy* to Him, and an *Enemy* to God Himself, by trampling under foot all the most sacred *Ties of Duty* I am under?" I say, Could this have been said *truly*, and with the *concurrent Testimony* of Those who convers'd with Him, that such was his *Behaviour*; it would have furnish'd out *One Probability*, infinitely outweighing *All* that He has taken the Pains to amass together. But when this *Argument*, taken from his *Profession*, and from the *Obligation* of an *Oath*, is so far from being made the *Support* of the *Improbability* of his *Guilt*, that, throughout the *Whole Speech*, He did not think fit once to touch upon that *Subject*; or to say *One Word* of the *Sense* He had, or ought to have upon his *Mind*, of the *sacred Obligation* of his *Oath*: and when He had not indeed the *Courage* to appeal to *Any publick Marks of Zeal* for the *present Protestant Establishment*, for many *Years* last past: Methinks, He had much better have let alone his *Apology* from *Improbabilities*; because *Silence* upon some *Topics*, which lay so plainly in his *Way*, is a much stronger *Argument* of his *Guilt*, than all other *far-fetch'd Considerations* can be, of his *Innocence*.

But since these *Particulars*, which every *Reader* would naturally expect, are all carefully omitted, or forgot: Let Us see what those are from which He thought it a Part of his *Dexterity* to fetch his *Defence*, as to *Improbability*. And I shall now put Them, as they offer Themselves, into the *Form of Argument*; that their *Force*, or *Weakness*, may be the easier seen. This Part of the *Defence*, therefore, must run thus, "My Lords, The late *Duke of Ormond* was the *Person*, amongst the *Traitors*, I had the *greatest Respect* for; and of the *Two Persons* to whom I am charged to write, *One* I never saw, and the *Other* I am scarce acquainted with; besides that He was thought to have left the *Pretender*: and therefore, It is *Improbable* that, if I were engaged in a *Treasonable Design*, I should not correspond with the *First*; but with the *Two* last; and this, by *Letters* sent by the *Common Post*, without regard to *Caution*, or *Secrecy*." But here, I must observe as I pass; that he shews much less regard to *Caution*, in mentioning the late D. of *Ormond's* Name, because there was *Proof* of his having receiv'd from the *Dutchess* of *Ormond* a *Letter*, which plainly enough signify'd some *Correspondence* with *Her Lord* abroad; as well as his having convers'd with *Another Person*, just before his going for *Spain*. Besides, The *Two* with whom He was accused of corresponding, were well known to be firm in the *Pretender's* Interest, by all *Friends*: and it is of absolute *Necessity* for *Persons* engaged in such a *Correspondence*, to carry it on with *Those* who are in the *Situation* of forwarding the *Design* most, and who can most easily and readily be corresponded with. And as for *Caution*; it is manifest, He chiefly depended upon the *Secrecy* of *Cyphers* and *Cam-Words*; and thought Himself safe, in the constant *Care* He took, of not coming within the *Reach* of such *Evidence*, as would convict Him in *Westminster-Hall*. The *Cunningest Men* do sometimes the most uncautious Things: and the only *Point* here is, about *Fact*, Whether He did not dictate those *Treasonable Letters*, to the *Pretender*, and to *Two* of his most faithful *Servants*; and whether the *Proofs* of that *Fact* do not infinitely outweigh a faint *Shadow* of a *Probability*, which is indeed *no Probability* at all.

But He proceeds thus, "Is it *probable* that when attending the sick *Bed* of my *Wife*, and expecting her *Death* not daily but hourly, I should enter into *Negotiations* of this kind?"—It is not *tolerable* to enter into *Any Man's Private*, or *Domestick Affairs*, but where He Himself officiously, unnecessarily, and in prejudice to the *Cause* of the *Publick*, leads the *Way*; and makes it excusable, by making it necessary. Those who knew the late *Bishop*, and had observ'd his *Conduct* in the *Relation* in which He here speaks of Himself, are the *Best Judges*, whether *Any Argument* of this sort could, in his *Case*, have any the least *Degree* of *Force* in it. I can only speak to what appear'd at the *Bar*; and there, I must do Him the *Justice* to say,

say, that He did not at all affect the Outside of any sort of Concern, or Passion, at the repeated Remembrance and Discourse of her Sickness or Death. So that, I own, I concluded that He, who could bear and speak of it so often, in the Course of the Trial, so sedately and composedly, only as a Matter of Fact, or a Note of Chronology; or as He might have done of *Harlequin's broken Leg*; could never have receiv'd any Stop from the Thing itself in Any of his great Designs, but only what Common Decency required, for his own Sake. And I will presume to say, that This sort of Apology ought not so much as to have been mention'd upon any Occasion by Any Man, but One inwardly conscious of a Real Personal Fondness, passionate enough to have hinder'd all the Functions of the Active Life; nor by One, who knew as well as Those who heard Him, that All great Undertakings go forward, and all the Affairs of this World are carried on, notwithstanding the greatest Domestic Afflictions. But how could He think that the commonest Reader would help observing, from the Nature of the Thing, that these Negotiations must have been enter'd into, long before this Affliction came so near Him; and that, in this very Correspondence, He was to be in a State of Inactivity, during the Days of Mourning; and after them, to return to Business again; and that all Men of Enterprizing Geniuses would take it very ill, to be thought so abject, as to sink and cease from their Duty, upon Events so common as the Mortality of Friends and Relations? And indeed, I cannot help judging that No One, but a Guilty Man, who stood in need of every Twig his Hands could lay hold on, could have mention'd this Topick, in this Manner, amongst his Improbabilities.

As for all the Circumstances that follow, They may be put together into One Argument, and trusted very safely.—“I was (says He,) carrying on Publick Buildings at Bromley and Westminster—I was searching old Books about the Foundation of Westminster—I was corresponding with Learned Men, and going to settle the Time of the writing the four Gospels—I was always at home, and only at Dinner stir'd out of my Chamber,—and receiv'd all who came to me, and so had no Opportunity of being thus engaged—Neither my Servants, nor Acquaintance, knew any thing of my being in this Conspiracy—nor particularly Mr. Pope, who was my most constant and intimate Companion, and who has testified thus much for Me.—I have not been bred to Arms, but to Learning;—[and therefore, could not carry on a Correspondence by Letters.]—I have been in Parliament, but never was in a Counsel of War.—I have perhaps been thought too active in my own Business, but never meddled remarkably out of my own Sphere.—I had no Temptation to This which is laid to my Charge.—For, I am far from Ambition; and always was resolved against rising higher—I am so far from Covetous, that I despise Riches too much—I

have laid out 800 l. upon my Houses, and took not a Farthing of my Predecessor's Widow for *Dial pidations*—and have spent the rest as becomes a Bishop.—I cannot be supposed to have an Affection for the Church of Rome. I have always oppos'd Popery. I began my Studies (about Forty Years ago) with *Chillingworth's Immortal Book*—I wrote a Defence of Luther, thirty Years ago;—[and therefore, cannot Now be in a Conspiracy in Favour of a Popish Pretender.]—I was always a Friend to Liberty; an Advocate for Inferiors against their Superiors; [and in this Character, I opposed Those in K. William's Administration, and in Q. Anne's, at the Beginning of her Reign;]—and therefore, cannot be supposed Now to be an Enemy to K. George.

I hope the Reader will not think I have framed and invented this String of Improbabilities. He may see it in Print. And I assure Him, I have only fill'd it up with a few Particulars, which were spoken by the Bishop, but are omitted in the printed Defence; and with a Word or Two, which He did not indeed speak, but which are presently seen to be absolutely necessary to make the Form of that Conclusion which alone could be of any Use to Him.—To place these Particulars before the Readers Eyes, with the Mention of that Conclusion He desired to be drawn from them, is enough of itself to expose the Weakness of them, and to make any more Words unnecessary upon this Part of the Subject.

Had the Case been so, that His Accusers had argued against Him from such Topicks as these—You are a Proud, a Covetous, an Ambitious Man; a great Lover of the Grandeur of the Church of Rome; and consequently, of a Popish Pretender; and the like: and therefore, You was in this particular Plot, and acted the Part of a Chief Correspondent in it:—All these Instances had been proper to be urged, if they could have been proved. But when on One Side, They insist upon quite different Matters of Fact, which point out a particular Treason; and on the Other, He answers, That this can't be believ'd, because He is free from All those Vices which could lead Him to it, being All Humility, and Quietness, and Contentedness, and Charity; What is This? or what can it be, but a Mark of Guilt, and an Attempt after Popularity? For, as what I have just now mention'd, could be the only Good Reason, to justify his running out into any one of these personal Particulars: So, the only True Reason, which, in the Circumstances of his present Case, could move Him to such a Conduct, must have been the Inward Sense that He wanted more substantial Replies; and the flattering Hope, that This Enumeration would be more moving to Common Minds, than any thing He could offer of another sort; and the pleasing Imagination, that his Adversaries had furnish'd Him with an Opportunity of giving the World a Picture of Himself, in such Colours as He himself could best paint; and of publishing far,

far and near, with the Trumpet of his own Voice, *Those Virtues*, which *None* perhaps had ever before discover'd; and of which, otherwise, the *World* had remain'd perfectly ignorant. And now They are all *published*, I can safely say this of them, "That all united, are no more to the *probable Proof* of his *Innocence* of the particular *Guilt* laid to his Charge, than if he had argued, that He could not be supposed to be in the *Conspiracy*, because He was of a *fresh Colour*, or subject to the *Gout*—or because He was a *Lover of Wit*, an *Admirer* of the *Classical Authors*; was very conversant in the Beauties of the Ancient Poets; and spent many Hours and Days of his Life in the Company of the *Best Modern Poet* of our *Nation*, that this *Age* has produced.

BRITANNICUS.

P A P E R XI.

AFTER that Part of the late *Bishop* of *Rochester's* Defence, which consists of a *Catalogue* of supposed *Improbabilities*; the Next which offers itself relates to the *Nature* and *Circumstances* of the *Punishment* inflicted upon Him, by the *Bill*. And his *Complaints* on this Head are divided into such as concern his *Case*, consider'd in the Rank of *Common Men*, and *Common Subjects*; and such as affect Him, consider'd in the *Character* of a *Clergyman*. As to the former, it would be great *Mispende* of Time, to go over all the Particulars here insisted on; and to follow a *Criminal*, supposed to be found *Guilty* of a very *High Crime*, arguing against the Reasonableness of a *Punishment* greatly inferior to the *Crime* itself. For this Part of his Argument is not taken from his *Innocence*: if it were, it would, and must, run thus. "My Lords, I am innocent, and must appear so; and therefore, I trust, you will lay *No Punishment* at all upon Me." This had been the just and undeniable *Inferente*: because where there has been *No Guilt*, there can justly be *No Punishment*. But the *Argument* here made use of is this. "Supposing Your Lordships to think and find Me *Guilty* of the *Crime* alledged against Me; yet sure You cannot be so hard as to banish Me from my native Country, and deprive Me of the Conversation of my Friends, and take from Me the Support of my *Temporal Revenues*." The *Crime* here is no less than that of *High Treason*, the greatest *Crime* known in our *Law*. The *Punishment* in the *Bill*, is not the *Usual Punishment* of an *Ignominious Death*; but the much *lesser Punishment* of *Exile*. And the *Criminal* begs of his *Judges* to think *This Punishment* vastly *Greater* than his *Crime* deserves; and to change it into *Something lighter*; that is, either *Nothing* at all, or *Nothing* that could be call'd a *Punishment*. "Find me *Guilty*, if you think fit: but let me enjoy the Comforts of this *World* amongst You still, as I have hitherto done." This is the *Voice* of this Part of his *Speech*. To mention it, is e-

nough to shew the *Absurdity* of it; and therefore, I shall only add two *Observations*. One is, that some of these *Circumstances* which He mentions, as the *greatest Hardships* of his *Case*, were not absolutely fixt by the *Bill*; but left in the *Breast* of the *Crown* to alleviate; and have been since alleviated by a *Royal Permission*, that such of his *Relations* and *Servants*, as He desired, might accompany and attend Him. The *Other Remark* is, that upon the *Whole*, there never was a *Punishment* for so high a *Crime*, temper'd with more *Mildness*; and that it would be much harder to answer the Complaint of his *Injured Country*, speaking to his *Judges*, and demanding, "Why They did not punish such *Treason*, as such *Treason* deserv'd to be punish'd;" than to reply to His Unreasonable Complaint, "Why do You punish Me with *Exile*, when You might inflict *Death* it self?" Or, in other Words, "Why do You inflict a *Lesser Punishment*, when You have a *Right* to inflict a much *Greater*?"

The *Other Branch* of the Complaint against the *Punishment*, was taken from the *Spiritual Character* of the *Criminal*. And this the late *Bishop* usher'd in, with some sort of Solemnity. "What is most particular in my *Case*, (says He,) I will repeat distinctly, that my *Reverend Brethren* may hear it. I am render'd incapable of using or exercising any Office, Function, Authority, or Power Ecclesiastical, not only in his Majesty's Dominions, but any where else." Then follows an Exclamation, "Very hard! that such spiritual Power as is not derived from Men, but from God Himself, should be taken from Me!" His *Reverend Brethren* heard this; but were too wise to be imposed upon, by the Sound of Words, and the Pretence of *Privileges* inconsistent with the Safety of *Humane Society*. They very well knew that the *Right* of the *State* to defend itself against *Civil Criminals*, or *Traitors*, was the same; of whatever *Profession* the *Criminal* might be. They knew that the *Supreme Power* had a *Right*, in such Cases, to inflict *Close Imprisonment*, or *Death* itself; in both which Cases all Exercise of Ecclesiastical Powers was effectually and certainly taken away. They had too much Sense to think that a *British Act* of *Parliament* could extend its Influence beyond the Limits of *British Authority*; or operate out of its own *Sphere*, upon the *Privileges* or *Liberties* enjoy'd under the Protection of *Foreign States*: And They saw, from the very Words of the *Act* itself, that All it pretended to, was to restrain, as far as the *Supreme Authority* of *Britain* could reach, that *External EXERCISE* of Ecclesiastical or *Spiritual Functions*, which might be of Prejudice to the *Civil Constitution* of these Kingdoms; without concerning itself with *Inherent Powers*, or *Indelible Characters*. They knew that *All State-Criminals*, as such, are upon an *Equal Foot*: and that, as it is the *Will* of God that *Traitors* should be punish'd, and *States* preserv'd from all future bad Effects from their

their *Treason*: so, it cannot be said to take away any *Power* which could ever come from *GOD*; or so much as to be displeasing to Him, to hinder effectually, as far as possible, that *Exercise* of any *Spiritual Functions*, which may still be the great *Nourishment* and *Instrument* of the same *Dangerous Treason*, against which All *Societies* have a *Right* to guard Themselves. They could not therefore, be weakly caught by these *enticing Words of Man's Cunning*; whilst They consider'd that the same *Way of Argument* would lay open all the *Fences* of the present *Establishment*, to *Papists* and *Nonjurors*; and must in the End root up every *Foundation* of the present *Government*. For if it be enough to talk of *Powers* coming from *God*—not to be restrained in their *Exercise* by *humane Laws*, without a *Crime*—What shall we think of those *Laws*, which restrain the *Exercise* of *Spiritual Functions* in any *Congregation*, to such *Persons* only as pray for the present *Royal Family*? and the like. *Popish* and *Nonjuring Priests* have the same *Allegation* to make, of *Spiritual Powers* from *God*. And if a *State* cannot restrain and limit and hinder the *Exercise* of such *Powers*; there is an *End* of all *Hope* of its *Safety*. And this *Exercise* is no more hinder'd by such a *Clause* as this *Act* contains, than it is by laying a *Condition* upon *Persons*, which it is morally impossible for Them to comply with. Whoever therefore, thinks the *State* to have a *Right* to do this *Latter*, must think It to have the same *Right* to the *Former*: whatever his *Notion* may be of *Ecclesiastical Powers*, or *Spiritual Characters*. In a *Word*, We may defy *Any Government* in the *World*, to stand, I will not say, *One Year*, but *One Month*, if this *One* particular *Right* be wrested out of its *Hands*, under pretence of *Powers* not to be touch'd, even in the *Exercise* of them: Which *Exercise* of them is the only Thing, the *Act* concerns itself with. For the *Conclusion* is immediate. If the *Exercise* of these *Powers* is not to be touch'd; then, the *Persons* who have them are not to be touch'd. And if the *Persons* who have them are not to be touch'd; then, They are not only the *Guides* and *Instructors* of the *People* in what is properly call'd *Religion*; but All *Civil Government*, and *Right* to rule, must in Effect be at Their *Command*, and *Theirs* only. For, from the *Moment* of such an *Exemption*, it must rest in Them to raise and to dethrone, to lift up and to pull down, as They shall think best. A *State* of Things, which the *Good Part* of that *Body*, I dare say, look upon with the utmost *Abhorrence*; and which the *Bad Part*, I trust and hope, for the *Sake* of my *Country*, shall never enjoy!

Before I wholly leave this *Argument*, taken from some pretended peculiar *Privileges* of Men of the *Holy Order*; (which are so many *Encouragements* to Them, to deal in *Treason*, and all other *Crimes*, if They are so disposed;) I will mention another *Particular* of the same *Kind*, made use of by the same *Mouth*, and for the same *Purpose*: but indeed, Both so exceed-

ing weak, that I cannot but think, the *Person* who made use of them, knew perfectly well that He was, in these *Parts* of his *Defence*, only attempting to impose upon the *Ignorance* of Others, and not delivering his own *real Sentiments*.

In the *Argument* I have already consider'd; the *Privilege* of *Clergymen* is in Effect declared to be an *Exemption* from any *Civil Restraint* in the *Exercise* of their *Function*. The *Particular* I am now going to take Notice of, is Another *Privilege* declared likewise to belong to them: And that is, the *Privilege* of having Other *Laws* of *Evidence* against Them, in *Criminal Cases*, distinct from Those by which *Laymen* may be convicted. For it is upon this *Foundation* that the *Argument*, p. 15. must rely. "Give me leave (says the late Bishop) to make mention of a Text in Holy Writ. Against an ELDER receive not an Accusation, but before Two or Three Witnesses, &c." much more, says He, against One who is more than an Elder. I shall not stand here to shew, what has been sufficiently shewn by Others, the great *Mistake*, or *Ignorance*, of seriously applying a *Rule* given to *Timothy*, relating wholly to *Church Affairs*, and to the *Elders* then under Him; of applying this, I say, to the *Case* of *Treason* against a *State*. I might have added Something worse than *Ignorance*; for, One can hardly believe a *Man* of any *Parts*, in earnest, in such an *Application*. But what I remark is, that the *Argument* here urged is of no Importance, unless it relies upon this *Supposition*, that this *Rule* taken out of *Scripture*, relates to *Civil Trials* in *Courts of Judicature*; and conveys a *Privilege* to One *Body* of *Subjects* to be exempt from the *Laws* that bind and affect all Others, if those *Laws* differ from this *Rule*: than which there cannot be a greater *Indignity* offer'd to the *Holy Scripture*, by the greatest *Enemy* it has in the *World*; nor a greater *Absurdity* advanced upon the *Subject* of *Civil Government*. Let Us apply this same *Rule* to the *Case* of *Murder*; to which it reaches as truly as it does to that of *Treason*. Supposing (only for *Argument's* sake) that a *Clergyman*, or even a *Bishop*, could be so wicked as to be *Guilty* of that *Crime*. In this *Case* our *Law* allows of *Evidence* from the *Concurrence* of several *Remarkable Circumstances*, even without the positive *Testimony* of One *Witness* to the *Fact* it self. But let the *Criminal* have the *Benefit* of this same *Text*; and He may soon claim the *Privilege* of being even an *Habitual Murderer*, without any *Fear* of *Punishment*. And He may urge with the same *Strength* of *Reasoning*, "Your *Law* indeed, and your *Method* of Proceeding, may be good with regard to *Laymen*, who commit such *Facts*: But as to Us *Elders*, or more than *Elders*, *St. Paul* has establish'd a *Rule*, from which You ought not to vary; and expressly order'd that This *Accusation* it self should not so much as be receiv'd against Us, without the *Evidence* of Two or Three Living *Witnesses*." For, One of these Two *Points* must certainly be true, Either That This was the *Design* of *St. Paul*, to interpose and interrupt

interrupt the *Publick Justice* of Mankind, in *Criminal Cases*; whilst He was giving a *small Church* of *Christians* some prudential *Rules of Behaviour* within itself: Which is too great an Affront to *St. Paul*, in his *Character*, either of a *Christian*, or an *Apostle*, or a *Man of Understanding*, to be admitted into our *Thoughts*: Or, That *this Rule* relates no more to *Treason*, than it does to *Murther*; and no more to *Either* of those *Crimes*, or to *Any Civil Process* against any *Civil Criminal* whatsoever, than it does to the *Discipline* of an *Army*, or to the most distant *Thing* in *Nature*. It was in truth an *Insult* upon the *Understandings* of his *Judges*, for the late *Bishop* to mention it: and it would be an *Insult* upon the *Common Sense* of the *Reader*, to spend any more *Time* in shewing either the *Ridiculousness* of the *Observation*, or the *Fatal Consequences* of it to *Humane Society*, or the *little Wisdom* of *One*, who would be thought a *Great Man*, in mentioning what is so soon detected, and so easily discover'd, to carry a *Load of Absurdities* along with it.

I will conclude therefore, this *Subject* with *One plain Word*. "Nothing can be more unrighteous, than to make any whole *Society* of *Men* answerable for the *Extravagant Pretences*, or *Mad Claims*, of some *One* or *More* of its *Members*. But if ever that unhappy *Time* should come, (which, I trust, never will,) when a *Body of Men*, devoted by their *Profession*, to the *great Concerns* of the *World* to come, instead of *Other Methods* which never fail of procuring a lasting *Respect* and *Honour*, should be *universally* seen to lay hold on every *Opportunity* in *Life*, and every *Expression* in *Scripture*, to create to Themselves a *Set* of *distinct* and *separate Civil Privileges* from *Other Subjects*, or to plead an *Exemption* from the *Common Methods* of *Justice* in *Humane Society*—from that *Moment*, They may be assured, that They are laying the *Foundation* of such *Jealousies*, *Diffidences*, and *Fears*, in *Others*, as must be, in the probable *Event* of *Things*, and the natural *Operation* of such *Uneasinesses*, infinitely more dangerous to their own *Security* and *Peace*, and even to their highest *Temporal Concerns*, than *All* the *Imaginary Evils* They can hope to ward off by such *Enormous* and *Unbecoming Claims*.

BRITANNICUS.

P A P E R XII.

THE *Part* of the late *Bishop* of *Rocheſter's* *Defence*, which comes next, relating to the *Method* of proceeding against Him by *Bill* in *Parliament*, and to the *Nature* of the *Evidence* received in *Proof* of the *Crime* laid to his *Charge*, has been in effect some time ago fully consider'd, in *Two Former Papers*, which professedly handled the *Argument* about the *Inherent Right* of the *Supreme Authority* of the *Nation*, to such a *Procedure*; and the *Prudence* of making use of that *Right* upon just and proper *Occasions*: and

shall be further prosecuted hereafter, if need shall be. It is enough here to observe, that the *Right* itself is constantly allowed upon some *Occasions*, by All Those who have opposed the making use of it, upon *This*. And with regard to the *Person* here particularly concern'd, it is sufficient to remark, that the only *Ground* of his *Complaints* upon *this Head* must be, that He had vainly flatter'd Himself with the *Imagination* that He was *safe* in the prodigious *Care* He had made use of to guard Himself against the *Reach* of all *Evidence* in the *Common Course* of *Justice* in *Inferior Courts*; and from thence inferr'd, how very hard it was that *One*, who had given himself so much *Trouble*, in order to contract the *Guilt* of *Treason*, and so much more to hide it, should be at last taken in the *Wile*ness of his own *Cunning*; and brought to that *Punishment* in an *Extraordinary Method*, which, in the *Ordinary Course* of *Things*, He hoped to avoid. I will therefore stay no longer upon *this Part* of the *Argument*, but only just to take Notice of *One* very particular *Observation* the late *Bishop* has made, in the *Overflowings* of his *Wit* upon *this Subject*.

The *Passage* I mean, is in p. 15. but very imperfectly printed. "He would not, He said, deny the *Power* of the *Legislature* in this, or the like *Case*. He represented that *Power* as very great: and then added, "Greater in some *Sense* than That of the *Sovereign Legislator* of "the *Universe*—For He CAN do nothing Unjust."—whereas *Humane Law-makers* CAN.—Whether This were design'd as *Divinity*, or *Metaphysics*, or *Politics*, or *Satyrical Wit* upon his *Judges*, it is hard to determine; because it is an equally just and right *Observation*, take it which way You will. If it were intended for a *Maxim* of *Divinity*, it is much beneath the *Understanding* and *Abilities* of a *Great Divine*, by virtue of flourishing upon the Sound of a *Word*, to state a *Difference* between *Weak Men*, and the *Great God*; and to give the *Superiority* of *Power* to *Man* above the *Supreme Legislator*, upon Account of what is indeed the *Defect*, or *Weakness*, of *Imperfect Creatures*. For this is the *Case*. That *Almighty God* CAN do no wrong, arises from the *Absence* of all *Weakness* and *Imperfection* in Him. That *Man* CAN do wrong, arises from a *Weakness*, and not a *superior Strength* in Him; from the *Imperfection* of his *Views*, and the *Confinedness* of his *Powers*. So that it is the same *Observation*, in effect, as if He had said, "The *Power* of *Man* is greater than that "of *Almighty God*, because his *Weaknesses* are "greater: Or, *Man* may be said in some respects to be more *Powerful* than *GOD*, for "this very Reason, because He is infinitely "more *Weak*." Than which *Observation*, gravely deliver'd, I desire any *Person* to show me *One*, less worthy of a *Christian Bishop*, or less becoming a *Divine* who would be thought to understand the peculiar *Business* of his own *Profession*. The like may said of it, in any other serious *View*. It is entirely ill-founded, and void of all *Sense* and *Reason* to support it. And if it were

were meant as a Piece of *Satyrical Wit* upon his Judges, whom He would now represent as going to exceed all those Bounds of *Just* and *Right*, by which *Almighty God* Himself governs all his *Proceedings*; the Best that can be said of it is, That it is *Pointless Satire*, and *Cold Wit*; descending, in the *Luxuriancy* of *Fancy*, to play upon the *Ambiguity* of the *Word*, CAN; and to trifle egregiously in the most important Part of his *Argument*, relating to the *Justice* of what was now going forward. This Turn of Expression might be tolerable, perhaps, or pretty, in an *Epigram*, or a Piece of *Poetry*; where a sort of *Licence* is often given to good *Sounds* that are hardly *Sense*; and the *Reins* generally let loose to the *Warmth* of *Imagination* and *Invention*. But, Whether such a *Procedure* was worthy of a *Person* of *Figure*, in his *Circumstances*, pleading his *Innocence* at a *Bar*, before the most *August Assembly* in *Europe*; or indeed, Whether it was worthy of a *Great Man* of a *Holy Profession*, in any *Circumstances*, to introduce the *Supreme Being* into his Cause, by virtue of a *Comparison*, which, duly consider'd, must appear to a good Mind, too *ludicrous* and *low*; and perhaps I might have said, little better than *Profane*:—Of this, let all the World judge.

I come now to the last Part of his Defence; and the *Melancholy Part* of it: I mean, The late *Bishop's* solemn *Asseverations*, and *Conclusion* of the *Whole*. I call it the *Melancholy Part*; and so must every Man ever think it, who has any regard left to the *Simplicity* of *Words*, or the *Sacredness* of *Oaths*. For in such a Case as this, It makes but a small Difference in my Account, whether a *Person*, in direct positive *Words*, per-jures Himself; or, whether He artfully chuses such a *Manner* of Expression, and such particular *Matters* to speak of, as plainly shew the sole *Intention* of the Man to be the *Avoiding* every *Honest Declaration* that could be to the Purpose. When a *Person*, accused of a particular *Crime*, after having said what He thought proper in his own *Vindication*, or in Answer to the Evidence against Him, changes his Tone; and voluntarily offers his solemn *Asseverations* in order to clear Himself; He does in effect take a *sacred Oath*, to speak to the *Main Point*; to speak to it plainly, explicitly, without *Artifice*; and is in much the same Condition with any One who is formally sworn to speak the *Truth*, and the *Whole Truth*, as well as *Nothing* but the *Truth*. For the only Use of *Voluntary Asseverations*, in *Criminal Cases*, must arise from their *Plainness*, their *Openness*, their *Comprehensiveness*, and their *Fitness* to the single Purpose, at which They would appear to aim. Otherwise, They can have no Weight, but against the *Person*, who has recourse to them. And this Effect They must necessarily have. For, when a *Person* stands forth, and declares to his Judges that He is ready to purge Himself of the Charge brought against Him, by solemn Appeals to God, the Searcher of Hearts; and, after this moving Declaration, is observ'd to avoid the Direct Charge laid against Him; to pitch

upon some nice particular Circumstances of *Facts*, which were not made any Part of that Charge, at the *Bar* where He now stands; and to mix up his most solemn Words with that *Cunning* and *Art*, which ought to be far distant from them: It cannot be, but that his own Method and Form of Protestation must, itself, recoil upon Him; and be itself an Argument of that *Guilt*, it was officiously brought to hide.

This is the Case here. The late *Bishop*, to whose Profession such a *Procedure* little agrees, is expressly charged with dictating some particular Letters to Mr. Kelly; with corresponding with the Pretender; with Breach of his repeated Oaths of Fidelity to K. GEORGE, &c. After other insufficient Answers, He desires to have recourse to the Method of clearing Himself by the most solemn Appeals to GOD, as the Searcher of Hearts. In this Method, and throughout the Course of all these Appeals to Heaven, He carefully avoids the Mention of K. GEORGE's Name, or That of Any belonging to his Family. He never once declares Himself to have any Sense of his Oaths to K. GEORGE, and the Protestant Establishment, upon his Mind: or once acknowledges K. GEORGE's Right to these Kingdoms. He never once, so much as in Words, disowns the Pretender's Right to this Crown; or disclaims all Correspondence with Him; or declares even the coldest Resolution against Him. These Particulars, considering the Charge laid against Him, of breaking through the Sacred Ties of Repeated Oaths, could not be forgot; could not be omitted through Haste, or Inadvertence, or Defect of Memory; but must be designedly, wilfully, deliberately, pass'd over. And then, when He comes to the Main Particular, He runs off from That, as it was laid against Him in the Bill; and, instead of denying, in the Presence of God, that He ever communicated, or dictated any Letters to Mr. Kelly, or the like; He, dextrously, by I know not what Figure of Oratory, or what Rule of Art, solemnly denies that He ever SAW any such Letters of Kelly's— or that the Contents were ever communicated TO Him, BY Kelly.—Such a Use of Words as this, and such a Change of Language, are bad every where; but are insupportably bad in a Sentence, usher'd in with a solemn Appeal to Heaven, and sanctified with the Awful Name of GOD.

After having thus put a Cheat, as He hoped, upon the Ears of his Audience; and after having seem'd to deny (what He did not at all deny) his dictating Letters to Kelly, in the Correspondence laid to his Charge; After this, He concerns Himself only with Other particular Circumstances, which were not the Subject of the Charge against Him; but lay scatter'd in the Report of the House of Commons; and most of Them only there mention'd, as Matters related by Persons examin'd concerning what They had heard about the Conspiracy. Some of these Particulars, with very peculiar Circumstances of Time and Place, (tho' as I have observ'd, not made

made any Part of the Charge against Him,) He has taken upon Him more expressly to deny; whilst He was conscious, He avoided the True Points laid upon Him; and might safely deal about his Protestations, where there was nothing particular, so much as alledged in his Trial, to confront and invalidate them. This is the Method He thought fit to take, in so serious and solemn a Matter, as That of Appealing to God, the Searcher of Hearts. And if the Careful Omission of All that was truly proper for the Declaration of his Innocence, upon such an Occasion; the artful Evasion of what He would seem to speak to, by a subtle Change of the Main Charge; and the dextrous Running away from the Real Accusation against Him in the Bill, to several wandering Particulars in the Report not alledg'd against Him: If All this be not sufficient to satisfy any unprejudiced Person, that Guilt was the Real Ground of such a Behaviour, as Guilt alone could make necessary; I know not what to add. This I am sure of, that such Hiding and Concealing of Truth; such Avoiding of all plain Language; such Prevarication and Mental Reservation, after having made a solemn Shew of Appeal to God, can be thought to differ very little from the Guilt of Perjury; or the greatest Disrespect to the Sacredness of an Oath. Better a thousand times had it been for One of his Character, never to have enter'd into a Method of Defence, which was not forced upon Him; than to have enter'd into it with such Solemnity, and to have come out of it with such a Blot of Falshood, and such a Mark of Guilt, added to all the rest.

The Conclusion of his whole Defence is of a Piece with this Part of it. It is a Conclusion, not only very moving; but which would very well become the Mouth of a Good, Upright, and Innocent Man, submitting Himself to Injustice, and Wrong, under a Sense of God's over-ruling Providence. But, consider'd in the Mouth of One, so conscious to Himself of his own Inward Guilt, as not to be able plainly to disown the Charge; of One, proved, by a Multitude of convincing Circumstances, to have brought Himself to this Condition by Breach of solemn Vows and Oaths; and of One, whom All his own Art and Cunning could not cover from the Light of Evidence——It then becomes rather an Aggravation of his Crime, than an Argument of his Innocence; and is found to move the Indignation and Zeal of Mankind, much more than their Pity and Compassion. It is at best no otherwise esteem'd than it wou'd have been, had it come from a Person, whose Characteristick, and distinguishing Mark, through his whole Life of Controversy, was well known to have been a peculiar Knack and Dexterity of calling in the Holy Scripture into All his private Quarrels; and of applying the sacred Words of it, to all the Purposes of his own Personal Passions and Resentments.

If I have quite wearied the Reader with the

Tedious Particularity of these Remarks upon Every Branch of the late Bishop of Rochester's Defence; I can make no other Apology for it, than that I thought Myself obliged to it by my Duty to my Country; and by the Part every Subject ought to take in the Honour of Those, who have been infamously and scandalously abused, for the Just Judgment They passed upon Him. I will make an End of this Subject, with Two or Three General Observations upon the Whole; which shall follow in the next Paper.

BRITANNICUS:

PAPER XIII.

UPON the Review of the late Bishop of Rochester's Defence of Himself from the Charge laid against Him, an Observation or Two offer Themselves, which I can't forbear to dwell a little upon, before I quite take leave of the Subject. The first which occurs is, "That Guilt can sometimes transform a Man of the Brightest Parts into One of the Opposite Character; and put the Witty and Ingenious upon the Level with the Dullest and Heaviest of Mortals." If We were to comprehend the Whole of the late Bishop's Answer, in the shortest Compass, it might be all rightly express'd in the One single Word, FORGERY, repeated over and over again, and applied equally to Every Particular. For Instance——Q. What Account do You give of the Three Treasonable Letters, which plainly describe You, as the Person who dictated them? Ans. Forgery between a Great Minister and Another. Q. How can this be, when it appears the Other Person was not known to that Great Minister, till three Months after these Letters were intercepted? A. Forgery, notwithstanding this seeming Impossibility. Q. How came They to be written in Mr. Kelly's Hand? A. Forgery. If They were so, it is very well known that there has been such a Thing, as an Exact Imitation of Another Man's Hand. Q. How came an Answer, to these Letters from abroad, to be receiv'd here? A. Forgery. It was contriv'd so. The Answer was first made here, and sent abroad, in order to be intercepted when it shou'd come back. Q. But how is this possible, when Mr. Kelly, whom You still treat as your Friend, call'd for One Answer Himself, and order'd a Friend to call for Others? A. Forgery. This is my Answer still, without thinking Myself obliged to account for all Difficulties. Q. How came the Letter directed to Dubois, to be found in your Custody? A. Forgery again. They, who found it there, know best who order'd it to be brought thither. Q. How could it be forged by Those, who, as You Yourself observe, did not at first know what Use to make of it? A. Forgery, I insist upon it. Q. But how came it to have the same Seal, which was afterwards upon a Letter acknowledg'd by Yourself to be Your own?

K

A.

A. Ministerial Forgery. I can give Proof that there has been such a Thing, heretofore, as forging *One Seal* from the *Impression* of *Another*. This is my *Answer*. — I will not put any more *Questions*, since We are sure that the *Answer* to them *All*, (were They *ten times* stronger than Those already named,) would *begin* and *end* in nothing but the *same Sound*, *Forgery*.

Can any *Little Genius*, from this Time, ever want a *Reply* to the most perplexing *Difficulty*, when so *Great a Genius* has, in his own Example, shewn the *Easy Expedient* of having *One* and the *same Word* constantly at hand? What *Accusation* can ever hereafter touch any *Mortal* of the *Lowest Form*, when a *Person* of *Exalted Talents* has taught him to think it sufficient to elude *Every Part* of an *Accusation*, by the Repetition of a single *Word*, which requires neither *Parts* nor *Learning* either for the *Invention*, or the *founding* of it? But, instead of envying the *Happiness* and the irresistible Force of such a *standing Plea*; Who can forbear to wonder that a *Person* endow'd with such a *Fruitfulness* of *Invention*, and such a nimble *Vivacity* of *Parts*; and now lately so celebrated for *Unparallel'd Abilities*, could content Himself with so *vulgar*, so *unvaried* a *Reply* to *Every* thing; and stoop his *Great Soul* to a *Method*, which lies so open to the *Meanest Understanding*. Take any *Layman* of the most ordinary *Capacity*; and He may, upon the like *Occasion*, eternally cry out, *Forgery*, *Forgery*. Nay, (what is perhaps *Lower* in the *Opinion* of *Some*) Take *Any One* of *Those* now left behind upon the *Bench*, with *Capacities* as *Mean* and *Contemptible*, as the *Wickedest* or *Wittiest* of this *Great Man's* *Advocates* have lately invented for *Them*, in order to raise their *Hero's* distressed Character, and help his distressed Cause, — Take such an *One*, and put Him into their *Idol's* Place; and try Him with the *same Questions*, and see if He could possibly answer such a *Charge* with a less ingenious, or a less happy *Variety* of *Expression*, than this *Miracle* of *Wit* and *Oratory* and *Poetry* has done.

But why do I mention that *Bench*, unless to bewail it? *Unhappy Bench*? if the *Paintings* bestowed upon it by some late *Hands* be natural and just — “*Unhappy Bench*! abandon'd by all “ the *Graces* and the *Muses*, at that Moment “ when the late *Bishop* of *Rochester* removed “ from it! *Unhappy Bench*! forsaken Now by all “ the *Wit* and *Politeness*, which once adorn'd it!”

— But as these *Strokes* of *Satire* have fallen upon it, for *Virtue* and our *Country's* Cause, All We of the *Laiety*, who love *Virtue* and our *Country*, will rather say, Let the *Charms* of *Wit*, and *Song*, and *Epigram*, perish, when *Justice* makes its *Demands*. — And let it be an *Eternal* *Glory* to that *Bench*, to have join'd in the open *Detestation* and *Punishment* of *Knavery*, *Disimulation*, *Perfidy* to *God* and *Man*, *Falseness* in *Word* and *Deed*; and *Perjury*, the deepest of *Crimes* against *Religion* as well as *Society*. If such a *Conduct* has led the *Enemies* of the *Publick* to

speak *meanly* of *Them*; I hope, and dare say, There is not *One* of *Them*, who is not ready to reply, “ That He had much rather be represented by *Such*, and upon *such* an *Account*, under the *Lowest* of *Characters*; than to purchase the *Reputation* of *Great Abilities*, at the *Price* of *Ruin* to his *Country*, and *Scandal* to his *Profession*.” That *Good Man* who now presides in the *See* of *Rochester*, has experienced, in a particular *Manner*, the *Malevolence* of *Witless Infamy*. He is *Above* it all. And it is enough to say of Him, what *Thousands* in this *City* know to be true, That He never had (*I will not say, a Crime, but*) a *Fault* laid to his *Charge* by *Malice* itself, till he succeeded *Dr. A.* at *Rochester*; and that through his whole *Life*, his *Character* has as far outshone *That* of *Another*, (now only so much extoll'd by a *Few*), as the *Charity* and *Humility* of a *Christian*, the *Good Judgment* and *Sound Learning* of a *Divine*, the *Exemplary Labours* and *Prudent Conduct*, as well as *Useful Preaching*, of a *Parish-Minister*, exceed the *Turbulency* of *Ambition*, the *Flourishes* of *Wit* or *Poetry*, the *Party-Management* of an *Heated Brain*, the *Flames* of *Passion* opposed, and the *Falseness* of an *Aspiring Spirit* ungovern'd by any thing but a *Mistaken Cunning*. If any thing of this seems too severe, Let *Them* answer for it, who could find no other way of raising their *Great Man's* *Character*, but by depressing *That* of *Greater* and *Better*; or of paying their *Honours* to *Him*, without scattering abroad their *Infamous Abuses* upon *Others*.

I return from this short *Digression*, to the *Observation* which led Me to it. And if any *One* now ask, How it came to pass that no *Defence* remain'd to a *Man* of *Uncommon Invention*, and *Abilities*, but the *One* repeated *Excuse* of *Forgery*; there can be but *One Answer* to this, viz. That *Guilt* alone could be, and therefore was, the *True Cause* of it: *Guilt*, — which enervates all the *Powers* of *Wit* and *Eloquence*! — *Guilt*, which can bring down the *Brightest* to the *Groveling Estate* of the *Heaviest*! — which can reduce a *Man* of the *Finest Fire*, and *Sparkling Ingenuity*, to a *Condition* little above *That* of the *Dull* and *Stupid*; and can force upon a *Superior Genius* the *Necessity* of stooping as *Low*, as the *Lowest* of *Common Mortals*!

But there is *Another Observation*, which has been continually present to my *Mind*, thro' this *Whole Transaction*, and thro' every *Step* of the late *Bishop's* *Defence*. “ If He was resolv'd that *Forgery* should be his *One* and *Only Refuge*; It cannot but be esteem'd a certain *Mark* of his *Guilt*, that He never once charged any *Part* of it upon *Kelly*; but, on the contrary, always seem'd solicitous, upon every the least *Occasion*, to declare his absolute *Freedom* from all *Suspicion* of that sort.” And perhaps there may be more in this *Remark*, than at first there seems to be. For thus stands the *Case*. He was accused of *High-Treason*, in corresponding with the *Pretender*, and the *Pretender's Agents*. This

This Correspondence was proved principally by Letters written, and proved to be written, in Kelly's Hand. Kelly was own'd to be a Friend and Acquaintance of the Bishop's. The Marks and Characters in the Letters were acknowledg'd by the Bishop, to point Himself out pretty strongly. He often said, They must be written by One, who narrowly watch'd the Circumstances of Himself and his Family. And the Lords, at whose Bar He now stood, had before, by a solemn Judgment, declared Themselves satisfied that Those Letters were the Hand-writing of Kelly. The Plea then, which naturally offer'd itself to the late Bishop; and which must have had its due Force, and that a very great one, if it could not have been disproved, was this. "My Lords, No One is answerable for Letters, which Another may take upon Him to write in His Character; unless He can be proved to have directed the writing of such Letters. Were it otherwise, the most Innocent Men in the World would be the Prey and Sacrifice of the Wickedest and Vilest. These Letters are proved to be Mr. Kelly's Hand-writing: And You have so judg'd Them to be. He was acquainted enough with Me and my Family, to know and find out and mark those several Circumstances, which appear in these Letters to centre in Me. I have had no Part in them. I never dictated a Sentence to Him. I charge Him with forging a Correspondence in my Name. At least, as Your Lordships have declared Him Guilty of writing this Treason; I, who know my own Innocence, have a Right to rest my Cause upon this, That He wickedly wrote them, and sent them away, and received Answers to them, without my Privy, or my bearing the least Part in the Whole. And I hope, I am not answerable for what He, or any Acquaintance of mine, might forge in my Name, to help their own Cause, or to carry forward Purposes of their own, utterly unknown to Me."

In This indeed, there had been some Sense; and I will add, some Strength too; if Mr. Kelly could not have disprov'd it by a full Discovery. And this lay so fairly in the Way, that it could not have been over-look'd, or avoided by an Innocent Man. But when the late Bishop, through his whole Defence, was seen cautiously to guard against even every distant Insinuation of this sort; nay, to appear angry, if ever the Counsel for the Bill alledg'd that if these Letters were forged, it must have been done by Mr. Kelly; and to cry out, No, No,—No One has any Thought of that sort: When, instead of This, (which was the only natural Plea,) the Ministers were to be loaded with every Part of the whole Mass of Forgeries, tho' in the very Supposition absurd, and in the Execution impossible; and it was All to be declared Ministerial Forgery, and Nothing else—When this is the Case, I say, it must presently raise an Enquiry, Whence can this Conduct proceed? Whence could it be, that a Person, who could not but see such a Plea lie be-

fore Him, should refuse all Aid from That, and content Himself with Another; which is neither credible, nor possible, considering all Circumstances? And with regard to this Enquiry, I can neither find out, nor conceive, any other Answer, but That Guilt made the Plea impracticable; That He knew that He was not Innocent; and That He was justly afraid that, upon such a publick Charge against Kelly, his Friend could not be silent, but must inevitably declare the Truth.

In return therefore, to that Consummate Sedate Assurance with which Mr. Kelly had solemnly denied Himself to have any such Affairs as These with the late Bishop of Rochester; That Bishop could do no less than avoid any the slightest Insinuations against so Gentleman-like a Friend, who had out-faced Truth in so handsome a manner, rather than hurt his Principal. But not only this; (for this alone would never have prevented a Criminal, from making use of the only good Plea in his Way;) but his own Danger made Him reject it; and the Evil Consequences to Himself from his making use of it, presenting themselves to his View, affrighted Him from it. And that it could be nothing else, appears from hence. If the late Bishop had known Himself to have been perfectly Innocent of all such Dealings with Kelly; He had then nothing to fear from making use of that Circumstance of Kelly's writing these Letters, (already judg'd so by the Lords) to his own Advantage; and pleading the great and crying Injustice of his suffering for what Another, a profest Jacobite, had written in his Name, for the Service of the Pretender's Cause. And if Mr. Kelly had been angry at this, it was nothing to the Prelate, (then upon his Trial, under a very grievous Accusation,) who could receive no Hurt from his Displeasure, if his Breast was free from all Consciousness of Guilt. But if He felt within Himself the Strings of Guilt, the Case was otherwise. For if He had accused Mr. Kelly of so gross a Crime, as forging a Criminal Correspondence in His Name, and to his Destruction, unless detected; the Gentleman, who in so composed a Manner had utterly denied his own Hand-writing, and in so friendly a Manner, had gone out of his Way to defend the late Bishop more than Himself, could not have born an Imputation of so much Vileness, as That of Forgery to ruin this Great Man; but must have been provoked, (and justified in it by all the World,) to have made the fullest Discovery of the Whole Affair: And this must have ended in the utter Confusion of his Principal, tho' in nothing worse to Himself than what was already decreed against Him.

And therefore, it may unanswerably be argued, Guilt alone made the late Bishop rather chuse the popular inflaming Topick of Ministerial Wickedness, from which He hoped for some small Chance of Good to Himself; than that other Plea, from which (not being Innocent) He had nothing to hope, but His own Ruin, without Redress,

Redress, or Apology. And, upon the Whole,
—*He*, who took *not* one of those *Methods of Defence*, which *Innocence* could not but have taken; — *He*, who throughout his *Trial*, chose those *Methods of Defence*, which *Guilt* alone could make necessary, or plausible; — *He*, who had no *Reply* to make, but what was always taken from a *gross Imputation* upon *Ministers*, which plainly appear'd to be, in itself, *Contradiction*, and *Impossibility*; — Such an One must be esteem'd

Guilty; or else, (as I have had Occasion to observe, in other Parts of this Cause,) *Inventions* and *Reality*, *Truth* and *Falshood*, *Forgery* and *Just Evidence*, must be accounted the *same*; and never be distinguish'd from one another, in all *Judicial Affairs*: Which can end in nothing but first *Confusion*, and then the total *Dissolution* of all the *Bands of Humane Society*.

BRITANNICUS.

F I N I S.
10 FEB 59



